ONTARIO
LABOUR RELATIONS BOARD
REPORTS

May/June 2011

ONTARIO LABOUR RELATIONS BOARD

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ONTARIO
LABOUR RELATIONS BOARD
REPORTS

A Bimonthly Series of Decisions from the
Ontario Labour Relations Board

Cited [2011] OLRB REP.MAY/JUNE

EDITORS: VOY STELMASZYNSKI
LEONARD MARVY

CASES REPORTED

PAGE

1. Aditya Birla Minacs Worldwide Inc. o/a Aditya Birla Minacs and Director of Employment Standards; Re Marcelle Shayda 271

2. Art Gallery of Ontario; Re OPSEU 274

3. Brighton Court Apartments c/o Realstar Management, Bruce Maki, Wendy Nason Maki, Paul Halowaty and Deborah Warren Logar; Re Shawn Marc Amerlinck and Michael-John Knoblauch 281

4. Cantretrot Investment Limited; H & R Developments and/or; Re Universal Workers Union, LIUNA, Local 183; Re Toronto Residential Construction Labour Bureau 288

5. Crown In Right of Ontario (as Represented by The Ministry of Government Services); Re Association of Management, Adminstrative and Professional Crown Employees of Ontario; Re OPSEU 294

6. Finn Way General Contractors Inc., David Karimi, Jeff Bedard, Pat Ouelette and Frank Bisignano; Re United Brotherhood of Carpenters and Joiners of America, Local 1669 307

7. Graham Bros. Construction Limited; Re LIUNA, Ontario Provincial District Council and International Union of Operating Engineers, Local 793 327

8. Hardwall Construction Ltd.; Re, The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, Universal Workers Union L.I.U.N.A. Local 183, The International Union of Operating Engineers, Local 793 and Neil Martin, Inspector; et al 329

9. Just Energy Corp.; Re Baldeesh (Lisa) Dhillon and Director of Employment Standards........

10. Ontario Line Clearing & Tree Services Limited o/a Ontario Line Clearing & Tree Service; Re Gyula Bognar and Director of Employment Standards........ 361

11. Ottawa Business Interiors Ltd.; Re Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93........ 369

12. Palisades Retirement Residence Inc.; Re Claudette Bradshaw; Re Hospitality & Services Trades Union Local 261 382

13. Pensler, Sanford N., A Director of Korex Don Valley ULC; Re Ted Adams, et al and Director of Employment Standards........ 389

14. Zephyr Peat Land Harvesting; Re James Milne, Inspector 397

COURT PROCEEDINGS

1. Blue Mountain Resorts Limited; Re Richard Den Bok, The Ministry of Labour and The OLRB; Re Conservation Ontario 401

2. Elzbieta Olszewska; Re United Steel, Paper and Forestry, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 1998, and The Governing Council of The University of Toronto and OLRB 406

3. Todor Pandeliev, Re Ontario Labour Relations Board 408

SUBJECT INDEX

Abandonment – Collective Agreement – Construction Industry Grievance – Estoppel – Remedies – To support its position that the employer was bound to the Provincial Agreement the union relied upon a collective agreement signed in 1976 – The employer argued the union had abandoned its bargaining rights and alternatively was estopped from asserting its rights given the passage of 30 years – The Board noted that while it is possible to establish abandonment of provincial bargaining rights in the ICI sector, it is well-established that it is difficult to do so, given that it requires evidence of abandonment by every affiliated bargaining agent and the employee bargaining agency – Here the period of the union's inactivity was approximately two years prior to provincial bargaining and 28 years post – While the Board found it appropriate to consider the union's conduct in the period after provincial bargaining in order to assess whether that conduct was consistent or inconsistent with an earlier abandonment of bargaining rights, the Board was not persuaded that the union's failure (given its reasonable lack of knowledge of the employer's ongoing work) to actively enforce its bargaining rights in the period after provincial bargaining was corroborative of an earlier abandonment – The evidence concerning the period prior to provincial bargaining suggested that the union remained unaware of the employer's activities and was reflective of poor quality representation, but it came short of the unequivocal evidence of the union's intention to abandon bargaining rights – Accordingly the Board found that the union had not abandoned its bargaining rights – The Board found, however, that given the union's thirty years of silence and its failure to police the collective agreement, it would be inequitable for the union to insist on adherence to the Provincial Agreement – The Board found the union was estopped from relying upon its strict legal rights and that the estoppel comes to an end with the issuance of the Board's decision – Declaration made, grievance dismissed

OTTAWA BUSINESS INTERIORS LTD.; RE GREATER ONTARIO REGIONAL COUNCIL OF CARPENTERS, DRYWALL AND ALLIED WORKERS, LOCAL UNION 93 369

Certification Where Act Contravened – Intimidation and Coercion – The union alleged that the responding employer and named individuals violated sections 70, 72, and 76 of the Act – The union requested relief under section 11 of the Act – The union asserted that the employer fired eight employees after the employer learned that the union was obtaining signed membership cards – The employer denied that it had violated the Act and claimed that the layoffs were due to a shortage of work – The Board found that the employer violated the Act when it laid off the employees for exercising protected rights under the Act and it hindered the employees' right to select or be represented by a trade union – The Board ordered the certification of the union under section 11 of the Act, as no other remedy would sufficiently counter the effects of the violation – The Board added that it would remain seized to determine any compensation to employees and ordered the employer to post copies of the decision and a Notice to Employees about the decision in the workplace

FINN WAY GENERAL CONTRACTORS INC., DAVID KARIMI, JEFF BEDARD, PAT OUELETTE AND FRANK BISIGNANO; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 307

Collective Agreement – Abandonment – Construction Industry Grievance – Estoppel – Remedies – To support its position that the employer was bound to the Provincial Agreement the union relied upon a collective agreement signed in 1976 – The employer

argued the union had abandoned its bargaining rights and alternatively was estopped from asserting its rights given the passage of 30 years – The Board noted that while it is possible to establish abandonment of provincial bargaining rights in the ICI sector, it is well-established that it is difficult to do so, given that it requires evidence of abandonment by every affiliated bargaining agent and the employee bargaining agency – Here the period of the union's inactivity was approximately two years prior to provincial bargaining and 28 years post – While the Board found it appropriate to consider the union's conduct in the period after provincial bargaining in order to assess whether that conduct was consistent or inconsistent with an earlier abandonment of bargaining rights, the Board was not persuaded that the union's failure (given its reasonable lack of knowledge of the employer's ongoing work) to actively enforce its bargaining rights in the period after provincial bargaining was corroborative of an earlier abandonment – The evidence concerning the period prior to provincial bargaining suggested that the union remained unaware of the employer's activities and was reflective of poor quality representation, but it came short of the unequivocal evidence of the union's intention to abandon bargaining rights – Accordingly the Board found that the union had not abandoned its bargaining rights – The Board found, however, that given the union's thirty years of silence and its failure to police the collective agreement, it would be inequitable for the union to insist on adherence to the Provincial Agreement – The Board found the union was estopped from relying upon its strict legal rights and that the estoppel comes to an end with the issuance of the Board's decision – Declaration made, grievance dismissed

OTTAWA BUSINESS INTERIORS LTD.; RE GREATER ONTARIO REGIONAL COUNCIL OF CARPENTERS, DRYWALL AND ALLIED WORKERS, LOCAL UNION 93 369

Collective Agreement – *Hospital Labour Disputes Arbitration Act* – Interest Arbitrations – Termination – The applicant applied for a declaration that the union no longer represented the employees in its bargaining unit – The union argued that the application was untimely because several clauses of an interest arbitration award that was issued to the parties were still in dispute – The employer claimed that there were no outstanding issues with the arbitration award – Concerning timeliness, the Board considered whether the arbitration award determined a collective agreement under section 12(2) of the *Hospital Labour Disputes Arbitration Act* and s. 63(2) of the Act, and found that it did; the application was therefore timely – The Board noted that the arbitrator's introductory remarks indicated that the agreed-upon items were to be incorporated into the collective agreement and that the arbitrator would only remain seized to address implementation issues – The Board also cited the fact that the arbitrator indicated the term of the collective agreement settled by the award, and the fact that the union had given notice to bargain as evidence that a collective agreement had been determined – The fact that the parties had not signed or prepared a formal collective agreement was inconsequential to the Board's finding that a collective agreement did exist – Termination application continues

PALISADES RETIREMENT RESIDENCE INC.; RE CLAUDETTE BRADSHAW; RE HOSPITALITY & SERVICES TRADES UNION LOCAL 261 382

Construction Industry – Evidence – Practice and Procedure – Witness – The union sought production of witness notes that were protected by litigation privilege – The Board followed the Court's decision in *Kennedy v. McKenzie* which set out a number of exceptions to the claim of privilege – The Board noted that there did exist another reasonable form of evidence that could provide the information that the union sought, namely, the witness may testify under oath before the Board – The Board also noted that while it had the authority to accept the evidence pursuant to s. 111(2)(e), it chose to exercise its discretion to follow the Court's approach in this instance – The Board declined to order the employer to produce the notes – Matter continues

GRAHAM BROS. CONSTRUCTION LIMITED; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 327

Construction Industry – Health and Safety – Four different construction contractors filed individual applications pursuant to section 61(1) of the *Occupational Health and Safety Act* (OHSA) involving incidents concerning the operations of tower cranes and subsequent Orders made by various Ministry of Labour Inspectors – In each situation the Inspector required the contractor to produce a report by a professional engineer stating that the equipment, machine or device "was not likely to endanger a worker" pursuant to section 54(1)(k) of the OHSA – Each of the applicants retained an engineering firm who produced reports which were deemed to be unacceptable by the various Inspectors because they did not use the specific phrase "not likely to endanger a worker" – The applicants argued that the engineers' reports should not have to use this specific wording – The Board found that section 54(1)(k) of the OHSA clearly reflects the intent of the Legislature to require the employer to provide a report written by a professional engineer that precisely states that the equipment, machine or device is "not likely to endanger a worker" – The Board stated that these precise words create consistency of assessment and minimize confusion or debate among inspectors as to what benchmark must be reached in the content of an engineer's report – The Board was of the view that it was reasonable for an Inspector to conclude that if a professional engineer's report did not state that the equipment, machine or device was "not likely to endanger a worker", a danger or hazard persisted and a stop work order was necessary – The Board also noted that the Inspectors' decisions in these cases not to lift the stop work orders or non-use restrictions were justified, as many of the conditions which gave rise to the orders were not resolved – In conclusion, the Board found that all four construction contractors in these applications were not in compliance with the Inspectors' Orders and dismissed the applicants' appeals

HARDWALL CONSTRUCTION LTD.; RE, THE CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, UNIVERSAL WORKERS UNION L.I.U.N.A. LOCAL 183, THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 AND NEIL MARTIN, INSPECTOR; ET AL 329

Construction Industry Grievance – Abandonment – Collective Agreement – Estoppel – Remedies – To support its position that the employer was bound to the Provincial Agreement the union relied upon a collective agreement signed in 1976 – The employer argued the union had abandoned its bargaining rights and alternatively was estopped from asserting its rights given the passage of 30 years – The Board noted that while it is possible to establish abandonment of provincial bargaining rights in the ICI sector, it is well-established that it is difficult to do so, given that it requires evidence of abandonment by every affiliated bargaining agent and the employee bargaining agency – Here the period of the union's inactivity was approximately two years prior to provincial bargaining and 28 years post – While the Board found it appropriate to consider the union's conduct in the period after provincial bargaining in order to assess whether that conduct was consistent or inconsistent with an earlier abandonment of bargaining rights, the Board was not persuaded that the union's failure (given its reasonable lack of knowledge of the employer's ongoing work) to actively enforce its bargaining rights in the period after provincial bargaining was corroborative of an earlier abandonment – The evidence concerning the period prior to provincial bargaining suggested that the union remained unaware of the employer's activities and was reflective of poor quality representation, but it came short of the unequivocal evidence of the union's intention to abandon bargaining rights – Accordingly the Board found that the union had not abandoned its bargaining rights – The Board found, however, that given the union's thirty years of silence and its failure to police the collective agreement, it would be inequitable for the union to insist on adherence to the Provincial Agreement – The Board found the union was estopped from relying upon its strict legal rights and that the estoppel comes to an end with the issuance of the Board's decision – Declaration made, grievance dismissed

OTTAWA BUSINESS INTERIORS LTD.; RE GREATER ONTARIO REGIONAL COUNCIL OF CARPENTERS, DRYWALL AND ALLIED WORKERS, LOCAL UNION 93 369

Construction Industry Grievance – Employer – Health and Safety – The union alleged the responding party violated the collective agreement when it barred the union's representatives from attending at its job site – The responding party acknowledged barring the representatives because the union refused to provide it with an approved registration as required by the *Occupational Health and Safety Act* – The responding party argued that the union is an "employer" and its representatives attend the job sites as "workers" – Although the collective agreement provides that representatives shall have access to working areas, the responding party argued that complying with the contract would violate a direct order of a health and safety inspector – The Board found that the registration form related to "constructors" and "employers engaged in construction" – The union representatives, like others authorized by law to access the site (police, firefighters, municipal or health and safety inspectors), are not there at the behest of the constructor, nor under the constructor's direction or control – These "employers" are not bound to complete the OHSA form – Grievance allowed

CANTRETROT INVESTMENT LIMITED; H & R DEVELOPMENTS AND/OR; RE UNIVERSAL WORKERS UNION, LIUNA, LOCAL 183; RE TORONTO RESIDENTIAL CONSTRUCTION LABOUR BUREAU 288

Duty of Fair Representation – Judicial Review – The applicant sought judicial review of the Board's decision (and reconsideration) dismissing her s. 74 complaint – The Court found that the applicant was merging two issues: the university's decision to terminate her and the union's conduct in failing to adequately challenge the discharge – The Court held that the Board's finding that the union met its statutory obligation was reasonable – Further, there was no denial of natural justice or procedural fairness – Application dismissed

ELZBIETA OLSZEWSKA; RE UNITED STEEL, PAPER AND FORESTRY, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION LOCAL 1998, AND THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO AND OLRB 406

Duty to Bargain in Good Faith – Order for Productions – Unfair Labour Practice – AMAPCEO alleged that the Crown had violated s. 17 of the Act when it failed to disclose to AMAPCEO a "secret" agreement to compensate OPSEU bargaining unit members in addition to the amounts published in the parties' signed collective agreement – During the course of the hearing, a confidentiality order was made relating to documents

produced – The Crown sought a further permanent confidentiality order with respect to two letters that spelled out the "confidential compensation agreement" and were marked as exhibits in the proceeding – The Crown and OPSEU both argued that the absence of a permanent confidentiality order for the two documents would cause significant labour relations harm – The Board weighed the request for confidentiality against the open court principle – Having already ruled that the allegations of fact, if proven, would constitute a case for some remedial relief, the Board saw no reason to restrict AMAPCEO's ability to refer to the documents publicly – Request denied; matter continues

CROWN IN RIGHT OF ONTARIO (AS REPRESENTED BY THE MINISTRY OF GOVERNMENT SERVICES); RE ASSOCIATION OF MANAGEMENT, ADMINSTRATIVE AND PROFESSIONAL CROWN EMPLOYEES OF ONTARIO; RE OPSEU 294

Duty to Bargain in Good Faith – Unfair Labour Practice – OPSEU alleged that during bargaining the Art Gallery of Ontario did not disclose all information pertaining to funding for the reconstruction of the Gallery's Learning Centre and how that funding could lead to layoffs in the bargaining unit – OPSEU also claimed that the AGO accelerated the timing of layoffs after the union objected to the layoffs taking place during bargaining – The AGO denied any violation of the Act and asked the Board to exercise its discretion not to inquire into the complaint – The Board held there was no labour relations rationale to inquire into the first part of the complaint: the parties had reached a collective agreement in spite of OPSEU's suspicions, they had relatively stable labour relations, and they were not likely to face another expansion project as collective bargaining was, or was about, to take place – On the second issue, the Board found that there was labour relations rationale for inquiring into OPSEU's allegation of the accelerated layoffs – The Board found that OPSEU's allegations made out a *prima facie* case of a violation of section 70 of the Act – Because the first phase of the layoff schedule was implemented before the collective agreement was reached and because ten employees suffered lost work opportunities as a result of the accelerated layoffs, this portion of the complaint would warrant further inquiry by the Board – Matter continues

ART GALLERY OF ONTARIO; RE OPSEU 274

Employer – Construction Industry Grievance – Health and Safety – The union alleged the responding party violated the collective agreement when it barred the union's representatives from attending at its job site – The responding party acknowledged barring the representatives because the union refused to provide it with an approved registration as required by the *Occupational Health and Safety Act* – The responding party argued that the union is an "employer" and its representatives attend the job sites as "workers" – Although the collective agreement provides that representatives shall have access to working areas, the responding party argued that complying with the contract would violate a direct order of a health and safety inspector – The Board found that the registration form related to "constructors" and "employers engaged in construction" – The union representatives, like others authorized by law to access the site (police, firefighters, municipal or health and safety inspectors), are not there at the behest of the constructor, nor under the constructor's direction or control – These "employers" are not bound to complete the OHSA form – Grievance allowed

CANTRETROT INVESTMENT LIMITED; H & R DEVELOPMENTS AND/OR; RE UNIVERSAL WORKERS UNION, LIUNA, LOCAL 183; RE TORONTO RESIDENTIAL CONSTRUCTION LABOUR BUREAU 288

Employment Standards – The employee sought to overturn the findings of an ESO disentitling her to a wage differential based on inadequate notice of a change in her pay rate – The employee had been employed with the employer for a period exceeding ten years; the notice of pay reduction took effect three weeks after its issuance; the employee argued the notice period should have been eight weeks, and wanted the difference; she argued that the reduction in pay constituted constructive dismissal; she did not resign from employment – The Board held that the employee would have been entitled to termination pay at her original rate if she had resigned in the face of the pay reduction – By not resigning, she forfeited any entitlement to notice or equivalent pay – Application dismissed for not making out a case for the orders or remedies requested

ADITYA BIRLA MINACS WORLDWIDE INC. o/a ADITYA BIRLA MINACS AND DIRECTOR OF EMPLOYMENT STANDARDS; RE MARCELLE SHAYDA................ 271

Employment Standards – The employer applied to review an Employment Standards Officer's order for compensation for violation of the post-pregnancy reinstatement provisions – The employer led evidence to show that it was bound by the settlement of other litigation to eliminate the complainant's position – The Board held that the Act does not require the termination of another person's employment in order to comply with the obligation to reinstate to comparable employment – The Act is designed to protect employees on leave, not to provide greater rights to employees who go on leave than to other employees – Application allowed; order rescinded

JUST ENERGY CORP.; RE BALDEESH (LISA) DHILLON AND DIRECTOR OF EMPLOYMENT STANDARDS.. 358

Employment Standards – The employer sought review of an order for wages and compensation, the employment standards officer having found that the employee was entitled to overtime and was victim of a reprisal – The evidence revealed that the employee and his co-workers were dissatisfied with their wage rate and working conditions, and staged a work refusal to demand their rectification – The Board was persuaded that no overtime was owing to the employees – The Board held further that engaging in (or orchestrating) a work stoppage was wilful misconduct or wilful neglect of duty, and not an exercise of rights under the Act – Application allowed; orders rescinded

ONTARIO LINE CLEARING & TREE SERVICES LIMITED O/A ONTARIO LINE CLEARING & TREE SERVICE; RE GYULA BOGNAR AND DIRECTOR OF EMPLOYMENT STANDARDS.. 361

Employment Standards – This director's appeal of an order to pay vacation pay to a large number of employees of an insolvent company turned on the interpretation of s. 80(4): whether the exempting clauses under subsection (4) should be read disjunctively or conjunctively – The director relied on a statement in a Court of Appeal case that s. 80(4)(a) provides that Part XX does not apply to directors of corporations "that have been incorporated in another jurisdiction" and secondly, that "and" as used in s. 80(4) is used jointly and severally – The Board found that the Court of Appeal, in its two sentence statement on s. 80(4)(a) alone, did not express an opinion on whether subsection 80(4) as a whole was to be read disjunctively or not, and accordingly did not consider the decision binding – The Board noted that a disjunctive interpretation would not be consistent with a fair, large and liberal interpretation of the objects of the Act in that it would have the effect of immunizing directors of for-profit corporations not incorporated within Ontario, while directors of for-profit companies incorporated under Ontario law would be exposed to liability – Secondly, a disjunctive interpretation was also in disharmony with Part XX which makes it clear that whether the employer was incorporated in Ontario or not was irrelevant: the factor which determines the applicability of the Act was where the employee performs the work – Furthermore a disjunctive reading would immunize non-profit corporations under clause (c), which is redundant since s. 80(2) already accomplishes that result – Finally, a conjunctive interpretation was in accord with earlier Board jurisprudence – The Board found that paragraphs (a), (b) and (c) of subsection 80(4) were to be read conjunctively – Application dismissed

PENSLER, SANFORD N., A DIRECTOR OF KOREX DON VALLEY ULC; RE TED ADAMS, ET AL AND DIRECTOR OF EMPLOYMENT STANDARDS........................ 389

Employment Standards – Judicial Review – The Court found the Board's conclusion that the applicant's employment was terminated for wilful disobedience was a reasonable one – Application Dismissed

TODOR PANDELIEV, RE ONTARIO LABOUR RELATIONS BOARD....................... 408

Estoppel – Abandonment – Collective Agreement – Construction Industry Grievance – Remedies – To support its position that the employer was bound to the Provincial Agreement the union relied upon a collective agreement signed in 1976 – The employer argued the union had abandoned its bargaining rights and alternatively was estopped from asserting its rights given the passage of 30 years – The Board noted that while it is possible to establish abandonment of provincial bargaining rights in the ICI sector, it is well-established that it is difficult to do so, given that it requires evidence of abandonment by every affiliated bargaining agent and the employee bargaining agency – Here the period of the union's inactivity was approximately two years prior to provincial bargaining and 28 years post – While the Board found it appropriate to consider the union's conduct in the period after provincial bargaining in order to assess whether that conduct was consistent or inconsistent with an earlier abandonment of bargaining rights, the Board was not persuaded that the union's failure (given its reasonable lack of knowledge of the employer's ongoing work) to actively enforce its bargaining rights in the period after provincial bargaining was corroborative of an earlier abandonment – The evidence concerning the period prior to provincial bargaining suggested that the union remained unaware of the employer's activities and was reflective of poor quality representation, but it came short of the unequivocal evidence of the union's intention to abandon bargaining rights – Accordingly the Board found that the union had not abandoned its bargaining rights – The Board found, however, that given the union's thirty years of silence and its failure to police the collective agreement, it would be inequitable for the union to insist on adherence to the Provincial Agreement – The Board found the union was estopped from relying upon its strict legal rights and that the estoppel comes to an end with the issuance of the Board's decision – Declaration made, grievance dismissed

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Evidence – Construction Industry – Practice and Procedure – Witness – The union sought production of witness notes that were protected by litigation privilege – The Board followed the Court's decision in *Kennedy v. McKenzie* which set out a number of exceptions to the claim of privilege – The Board noted that there did exist another reasonable form of evidence that could provide the information that the union sought, namely, the witness may testify under oath before the Board – The Board also noted that while it had the authority to accept the evidence pursuant to s. 111(2)(e), it chose to exercise its discretion to follow the Court's approach in this instance – The Board declined to order the employer to produce the notes – Matter continues

GRAHAM BROS. CONSTRUCTION LIMITED; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 327

Evidence – Health and Safety – The responding parties brought a motion to strike certain pleadings of the applicants which relied on transcripts of recordings, surreptitiously taped telephone conversations between some of the individual responding parties – The applicants argued there should be no reasonable expectation of privacy because the conversations took place over a public line and in addition were or could have been overheard by third parties standing near one of the conversants – The Board held that the evidence sought to be adduced was relevant and, subject to any claims about authenticity, the best evidence as to what was said – Illegally obtained evidence is not, per se, inadmissible – Motion denied – Matter continues

BRIGHTON COURT APARTMENTS c/o REALSTAR MANAGEMENT, BRUCE MAKI, WENDY NASON MAKI, PAUL HALOWATY AND DEBORAH WARREN LOGAR; RE SHAWN MARC AMERLINCK AND MICHAEL-JOHN KNOBLAUCH .. 281

Health and Safety – Construction Industry – Four different construction contractors filed individual applications pursuant to section 61(1) of the *Occupational Health and Safety Act* (OHSA) involving incidents concerning the operations of tower cranes and subsequent Orders made by various Ministry of Labour Inspectors – In each situation the Inspector required the contractor to produce a report by a professional engineer stating that the equipment, machine or device "was not likely to endanger a worker" pursuant to section 54(1)(k) of the OHSA – Each of the applicants retained an engineering firm who produced reports which were deemed to be unacceptable by the various Inspectors because they did not use the specific phrase "not likely to endanger a worker" – The applicants argued that the engineers' reports should not have to use this specific wording – The Board found that section 54(1)(k) of the OHSA clearly reflects the intent of the Legislature to require the employer to provide a report written by a professional engineer that precisely states that the equipment, machine or device is "not likely to endanger a worker" – The Board stated that these precise words create consistency of assessment and minimize confusion or debate among inspectors as to what benchmark must be reached in the content of an engineer's report – The Board was of the view that it was reasonable for an Inspector to conclude that if a professional engineer's report did not state that the equipment, machine or device was "not likely to endanger a worker", a danger or hazard persisted and a stop work order was necessary – The Board also noted that the Inspectors' decisions in these cases not to lift the stop work orders or non-use restrictions were justified, as many of the conditions which gave rise to the orders were not resolved – In conclusion, the Board found that all four construction contractors in these applications were not in compliance with the Inspectors' Orders and dismissed the applicants' appeals

HARDWALL CONSTRUCTION LTD.; RE, THE CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, UNIVERSAL WORKERS UNION L.I.U.N.A. LOCAL 183, THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 AND NEIL MARTIN, INSPECTOR; ET AL 329

Health and Safety – Construction Industry Grievance – Employer – The union alleged the responding party violated the collective agreement when it barred the union's representatives from attending at its job site – The responding party acknowledged barring the representatives because the union refused to provide it with an approved registration as required by the *Occupational Health and Safety Act* – The responding party argued that the union is an "employer" and its representatives attend the job sites as "workers" – Although the collective agreement provides that representatives shall have access to working areas, the responding party argued that complying with the contract would violate a direct order of a health and safety inspector – The Board found that the registration form related to "constructors" and "employers engaged in construction" – The union representatives, like others authorized by law to access the site (police, firefighters, municipal or health and safety inspectors), are not there at the behest of the constructor, nor under the constructor's direction or control – These "employers" are not bound to complete the OHSA form – Grievance allowed

CANTRETROT INVESTMENT LIMITED; H & R DEVELOPMENTS AND/OR; RE UNIVERSAL WORKERS UNION, LIUNA, LOCAL 183; RE TORONTO RESIDENTIAL CONSTRUCTION LABOUR BUREAU 288

Health and Safety – Evidence – The responding parties brought a motion to strike certain pleadings of the applicants which relied on transcripts of recordings, surreptitiously taped telephone conversations between some of the individual responding parties – The applicants argued there should be no reasonable expectation of privacy because the conversations took place over a public line and in addition were or could have been overheard by third parties standing near one of the conversants – The Board held that the evidence sought to be adduced was relevant and, subject to any claims about authenticity, the best evidence as to what was said – Illegally obtained evidence is not, per se, inadmissible – Motion denied – Matter continues

BRIGHTON COURT APARTMENTS c/o REALSTAR MANAGEMENT, BRUCE MAKI, WENDY NASON MAKI, PAUL HALOWATY AND DEBORAH WARREN LOGAR; RE SHAWN MARC AMERLINCK AND MICHAEL-JOHN KNOBLAUCH .. 281

Health and Safety – Judicial Review – Blue Mountain sought review of a Board decision finding that the employer had violated the *Occupational Health and Safety Act* by failing to report the death of a guest who drowned in an unsupervised swimming pool at the resort – The Board had upheld the health and safety inspector's finding that a "person" included a guest and a "workplace" included the pool – On review, the Court agreed that the word "person" should be construed in its ordinary meaning and encompasses more than just workers – Conditions and hazards that result in the death of a non-worker could cause similar harm to workers – The Court held, however, that the Board's interpretation of "workplace" was unnecessarily broad and conflated the proprietary interests of the applicant with the statutory definition of workplace – Overall, the Board's decision was not unreasonable – Application dismissed

BLUE MOUNTAIN RESORTS LIMITED; RE RICHARD DEN BOK, THE MINISTRY OF LABOUR AND THE OLRB; RE CONSERVATION ONTARIO 401

Health and Safety – The employer appealed an order from a health and safety inspector requiring it to comply with the training programs for surface mine operations – The employer grows, harvests and processes sedge-grass peat – The employer and the Ministry were at odds regarding the compass of the definition of "surface mine" – The Board found that the operation of the employer had no relation to the supply of material

for construction, industrial or manufacturing purposes, therefore it could not be captured by the impugned definition – Appeal allowed; orders rescinded

ZEPHYR PEAT LAND HARVESTING; RE JAMES MILNE, INSPECTOR 397

Hospital Labour Disputes Arbitration Act – Collective Agreement – Interest Arbitrations – Termination – The applicant applied for a declaration that the union no longer represented the employees in its bargaining unit – The union argued that the application was untimely because several clauses of an interest arbitration award that was issued to the parties were still in dispute – The employer claimed that there were no outstanding issues with the arbitration award – Concerning timeliness, the Board considered whether the arbitration award determined a collective agreement under section 12(2) of the *Hospital Labour Disputes Arbitration Act* and s. 63(2) of the Act, and found that it did; the application was therefore timely – The Board noted that the arbitrator's introductory remarks indicated that the agreed-upon items were to be incorporated into the collective agreement and that the arbitrator would only remain seized to address implementation issues – The Board also cited the fact that the arbitrator indicated the term of the collective agreement settled by the award, and the fact that the union had given notice to bargain as evidence that a collective agreement had been determined – The fact that the parties had not signed or prepared a formal collective agreement was inconsequential to the Board's finding that a collective agreement did exist – Termination application continues

PALISADES RETIREMENT RESIDENCE INC.; RE CLAUDETTE BRADSHAW; RE HOSPITALITY & SERVICES TRADES UNION LOCAL 261 382

Interest Arbitrations – Collective Agreement – *Hospital Labour Disputes Arbitration Act* – Termination – The applicant applied for a declaration that the union no longer represented the employees in its bargaining unit – The union argued that the application was untimely because several clauses of an interest arbitration award that was issued to the parties were still in dispute – The employer claimed that there were no outstanding issues with the arbitration award – Concerning timeliness, the Board considered whether the arbitration award determined a collective agreement under section 12(2) of the *Hospital Labour Disputes Arbitration Act* and s. 63(2) of the Act, and found that it did; the application was therefore timely – The Board noted that the arbitrator's introductory remarks indicated that the agreed-upon items were to be incorporated into the collective agreement and that the arbitrator would only remain seized to address implementation issues – The Board also cited the fact that the arbitrator indicated the term of the collective agreement settled by the award, and the fact that the union had given notice to bargain as evidence that a collective agreement had been determined – The fact that the parties had not signed or prepared a formal collective agreement was inconsequential to the Board's finding that a collective agreement did exist – Termination application continues

PALISADES RETIREMENT RESIDENCE INC.; RE CLAUDETTE BRADSHAW; RE HOSPITALITY & SERVICES TRADES UNION LOCAL 261 382

Intimidation and Coercion – Certification Where Act Contravened – The union alleged that the responding employer and named individuals violated sections 70, 72, and 76 of the Act – The union requested relief under section 11 of the Act – The union asserted that the employer fired eight employees after the employer learned that the union was obtaining signed membership cards – The employer denied that it had violated the Act and claimed that the layoffs were due to a shortage of work – The Board found that the employer

violated the Act when it laid off the employees for exercising protected rights under the Act and it hindered the employees' right to select or be represented by a trade union – The Board ordered the certification of the union under section 11 of the Act, as no other remedy would sufficiently counter the effects of the violation – The Board added that it would remain seized to determine any compensation to employees and ordered the employer to post copies of the decision and a Notice to Employees about the decision in the workplace

FINN WAY GENERAL CONTRACTORS INC., DAVID KARIMI, JEFF BEDARD, PAT OUELETTE AND FRANK BISIGNANO; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669.. 307

Judicial Review – Duty of Fair Representation – The applicant sought judicial review of the Board's decision (and reconsideration) dismissing her s. 74 complaint – The Court found that the applicant was merging two issues: the university's decision to terminate her and the union's conduct in failing to adequately challenge the discharge – The Court held that the Board's finding that the union met its statutory obligation was reasonable – Further, there was no denial of natural justice or procedural fairness – Application dismissed

ELZBIETA OLSZEWSKA; RE UNITED STEEL, PAPER AND FORESTRY, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION LOCAL 1998, AND THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO AND OLRB 406

Judicial Review – Health and Safety – Blue Mountain sought review of a Board decision finding that the employer had violated the *Occupational Health and Safety Act* by failing to report the death of a guest who drowned in an unsupervised swimming pool at the resort – The Board had upheld the health and safety inspector's finding that a "person" included a guest and a "workplace" included the pool – On review, the Court agreed that the word "person" should be construed in its ordinary meaning and encompasses more than just workers – Conditions and hazards that result in the death of a non-worker could cause similar harm to workers – The Court held, however, that the Board's interpretation of "workplace" was unnecessarily broad and conflated the proprietary interests of the applicant with the statutory definition of workplace – Overall, the Board's decision was not unreasonable – Application dismissed

BLUE MOUNTAIN RESORTS LIMITED; RE RICHARD DEN BOK, THE MINISTRY OF LABOUR AND THE OLRB; RE CONSERVATION ONTARIO............ 401

Judicial Review – Employment Standards – The Court found the Board's conclusion that the applicant's employment was terminated for wilful disobedience was a reasonable one – Application Dismissed

TODOR PANDELIEV, RE ONTARIO LABOUR RELATIONS BOARD....................... 408

Order for Productions – Duty to Bargain in Good Faith – Unfair Labour Practice – AMAPCEO alleged that the Crown had violated s. 17 of the Act when it failed to disclose to AMAPCEO a "secret" agreement to compensate OPSEU bargaining unit members in addition to the amounts published in the parties' signed collective agreement – During the course of the hearing, a confidentiality order was made relating to documents produced – The Crown sought a further permanent confidentiality order with respect to two letters that spelled out the "confidential compensation agreement" and were marked as exhibits in the proceeding – The Crown and OPSEU both argued that the absence of a permanent confidentiality order for the two documents would cause significant labour relations harm – The Board weighed the request for confidentiality against the open court principle – Having already ruled that the allegations of fact, if proven, would constitute a case for some remedial relief, the Board saw no reason to restrict AMAPCEO's ability to refer to the documents publicly – Request denied; matter continues

CROWN IN RIGHT OF ONTARIO (AS REPRESENTED BY THE MINISTRY OF GOVERNMENT SERVICES); RE ASSOCIATION OF MANAGEMENT, ADMINSTRATIVE AND PROFESSIONAL CROWN EMPLOYEES OF ONTARIO; RE OPSEU 294

Practice and Procedure – Construction Industry – Evidence – Witness – The union sought production of witness notes that were protected by litigation privilege – The Board followed the Court's decision in *Kennedy v. McKenzie* which set out a number of exceptions to the claim of privilege – The Board noted that there did exist another reasonable form of evidence that could provide the information that the union sought, namely, the witness may testify under oath before the Board – The Board also noted that while it had the authority to accept the evidence pursuant to s. 111(2)(e), it chose to exercise its discretion to follow the Court's approach in this instance – The Board declined to order the employer to produce the notes – Matter continues

GRAHAM BROS. CONSTRUCTION LIMITED; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 327

Remedies – Abandonment – Collective Agreement – Construction Industry Grievance – Estoppel – To support its position that the employer was bound to the Provincial Agreement the union relied upon a collective agreement signed in 1976 – The employer argued the union had abandoned its bargaining rights and alternatively was estopped from asserting its rights given the passage of 30 years – The Board noted that while it is possible to establish abandonment of provincial bargaining rights in the ICI sector, it is well-established that it is difficult to do so, given that it requires evidence of abandonment by every affiliated bargaining agent and the employee bargaining agency – Here the period of the union's inactivity was approximately two years prior to provincial bargaining and 28 years post – While the Board found it appropriate to consider the union's conduct in the period after provincial bargaining in order to assess whether that conduct was consistent or inconsistent with an earlier abandonment of bargaining rights, the Board was not persuaded that the union's failure (given its reasonable lack of knowledge of the employer's ongoing work) to actively enforce its bargaining rights in the period after provincial bargaining was corroborative of an earlier abandonment – The evidence concerning the period prior to provincial bargaining suggested that the union remained unaware of the employer's activities and was reflective of poor quality representation, but it came short of the unequivocal evidence of the union's intention to abandon bargaining rights – Accordingly the Board found that the union had not abandoned its bargaining rights – The Board found, however, that given the union's thirty years of silence and its failure to police the collective agreement, it would be inequitable for the union to insist on adherence to the Provincial Agreement – The Board found the union was estopped from relying upon its strict legal rights and that the estoppel comes to an end with the issuance of the Board's decision – Declaration made, grievance dismissed

OTTAWA BUSINESS INTERIORS LTD.; RE GREATER ONTARIO REGIONAL COUNCIL OF CARPENTERS, DRYWALL AND ALLIED WORKERS, LOCAL UNION 93 369

Termination – Collective Agreement – *Hospital Labour Disputes Arbitration Act* – Interest Arbitrations – The applicant applied for a declaration that the union no longer represented the employees in its bargaining unit – The union argued that the application was untimely because several clauses of an interest arbitration award that was issued to the parties were still in dispute – The employer claimed that there were no outstanding issues with the arbitration award – Concerning timeliness, the Board considered whether the arbitration award determined a collective agreement under section 12(2) of the *Hospital Labour Disputes Arbitration Act* and s. 63(2) of the Act, and found that it did; the application was therefore timely – The Board noted that the arbitrator's introductory remarks indicated that the agreed-upon items were to be incorporated into the collective agreement and that the arbitrator would only remain seized to address implementation issues – The Board also cited the fact that the arbitrator indicated the term of the collective agreement settled by the award, and the fact that the union had given notice to bargain as evidence that a collective agreement had been determined – The fact that the parties had not signed or prepared a formal collective agreement was inconsequential to the Board's finding that a collective agreement did exist – Termination application continues

PALISADES RETIREMENT RESIDENCE INC.; RE CLAUDETTE BRADSHAW; RE HOSPITALITY & SERVICES TRADES UNION LOCAL 261 382

Unfair Labour Practice – Duty to Bargain in Good Faith – OPSEU alleged that during bargaining the Art Gallery of Ontario did not disclose all information pertaining to funding for the reconstruction of the Gallery's Learning Centre and how that funding could lead to layoffs in the bargaining unit – OPSEU also claimed that the AGO accelerated the timing of layoffs after the union objected to the layoffs taking place during bargaining – The AGO denied any violation of the Act and asked the Board to exercise its discretion not to inquire into the complaint – The Board held there was no labour relations rationale to inquire into the first part of the complaint: the parties had reached a collective agreement in spite of OPSEU's suspicions, they had relatively stable labour relations, and they were not likely to face another expansion project as collective bargaining was, or was about, to take place – On the second issue, the Board found that there was labour relations rationale for inquiring into OPSEU's allegation of the accelerated layoffs – The Board found that OPSEU's allegations made out a *prima facie* case of a violation of section 70 of the Act – Because the first phase of the layoff schedule was implemented before the collective agreement was reached and because ten employees suffered lost work opportunities as a result of the accelerated layoffs, this portion of the complaint would warrant further inquiry by the Board – Matter continues

ART GALLERY OF ONTARIO; RE OPSEU 274

Unfair Labour Practice – Duty to Bargain in Good Faith – Order for Productions – AMAPCEO alleged that the Crown had violated s. 17 of the Act when it failed to disclose to AMAPCEO a "secret" agreement to compensate OPSEU bargaining unit members in addition to the amounts published in the parties' signed collective agreement – During the course of the hearing, a confidentiality order was made relating to documents produced – The Crown sought a further permanent confidentiality order with respect to two letters that spelled out the "confidential compensation agreement" and were marked as exhibits in the proceeding – The Crown and OPSEU both argued that the absence of a permanent confidentiality order for the two documents would cause significant labour relations harm – The Board weighed the request for confidentiality against the open court principle – Having already ruled that the allegations of fact, if proven, would constitute a case for some remedial relief, the Board saw no reason to restrict AMAPCEO's ability to refer to the documents publicly – Request denied; matter continues

CROWN IN RIGHT OF ONTARIO (AS REPRESENTED BY THE MINISTRY OF GOVERNMENT SERVICES); RE ASSOCIATION OF MANAGEMENT, ADMINSTRATIVE AND PROFESSIONAL CROWN EMPLOYEES OF ONTARIO; RE OPSEU 294

Witness – Construction Industry – Evidence – Practice and Procedure – The union sought production of witness notes that were protected by litigation privilege – The Board followed the Court's decision in *Kennedy v. Mc v Kenzie* which set out a number of exceptions to the claim of privilege – The Board noted that there did exist another reasonable form of evidence that could provide the information that the union sought, namely, the witness may testify under oath before the Board – The Board also noted that while it had the authority to accept the evidence pursuant to s. 111(2)(e), it chose to exercise its discretion to follow the Court's approach in this instance – The Board declined to order the employer to produce the notes – Matter continues

GRAHAM BROS. CONSTRUCTION LIMITED; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 327

2000-10-ES Marcelle Shayda, Applicant v. **Aditya Birla Minacs Worldwide Inc. o/a Aditya Birla Minacs** and Director of Employment Standards, Responding Party

Employment Standards – The employee sought to overturn the findings of an ESO disentitling her to a wage differential based on inadequate notice of a change in her pay rate – The employee had been employed with the employer for a period exceeding ten years; the notice of pay reduction took effect three weeks after its issuance; the employee argued the notice period should have been eight weeks, and wanted the difference; she argued that the reduction in pay constituted constructive dismissal; she did not resign from employment – The Board held that the employee would have been entitled to termination pay at her original rate if she had resigned in the face of the pay reduction – By not resigning, she forfeited any entitlement to notice or equivalent pay – Application dismissed for not making out a case for the orders or remedies requested

BEFORE: *Ian Anderson*, Vice-Chair.

DECISION OF THE BOARD: May 16, 2011

1. This is an employee application for review under section 116 of the *Employment Standards Act, 2000* brought by Marcelle Shayda.

2. The responding employer requests that the application be dismissed without a hearing pursuant to Rule 39.1 of the Board's Rules of Procedure. Rule 39.1 provides:

> Where the Board considers that an application does not make out a case for the orders or remedies requested, even if all of the facts stated in the application are assumed to be true, the Board may dismiss the application without a hearing or consultation. In its decision, the Board will set out its reasons.

3. Ms. Shayda has filed extensive submissions in response to the employer's request.

4. Ms. Shayda's application contains a number of criticisms of the investigation and reasoning of the employment standards officer who denied her claim. It is not necessary for me to address these criticisms as Ms. Shayda's entitlement under the Act is not based on the investigation or reasoning of the employment standards officer, but on the facts as found by this Board. (That is, it is a "hearing *de novo*". I add this comment in order to address one of the questions posed in one of Ms. Shayda's letters filed with the Board.) For the purposes of Rule 39.1, those facts are assumed to be the facts as stated by Ms. Shayda in her application. A review of her application reveals the following facts upon which Ms. Shayda relies.

5. Ms. Shayda has been employed by the responding employer, Aditya Birla Minacs Worldwide Inc. o/a Aditya Birla Minacs as a "Quality Call Assessor" since August 1997.

6. In a memo dated November 21, 2008 to its employees, the employer noted that it "like so many other corporations, is feeling the negative affects of the current global economic climate". The memo continued to outline certain cost saving measures with respect to wage bands, sick days and breaks. The memo, however, stated "there will be no reductions made to

your current wage rate". This assurance was repeated in a subsequent memo dated December 23, 2008.

7. By memo dated August 21, 2009, the employer advised its employees that it had been successful in obtaining a major new contract. The memo noted that its final proposal to the client "needed to be flexible and contained a number of operational refinements".

8. By letter dated September 1, 2009, the employer advised Ms. Shayda that her rate of pay would be reduced from $18.76 per hour to $16.89 effective September 21, 2009. The letter makes reference to an "August 31, 2009" memo, which appears to have been the August 21, 2009 memo or in any event similar to it, as the memo is described as announcing "operational refinements" that were necessary "in order to maintain and renew a contract with one of our valued clients". The letter indicates that: "As a result, wage adjustments will be made to applicable employees who have exceeded the maximum pay rate amount of their respective pay grade". It then sets out Ms. Shayda's current rate of pay, current pay grade maximum (which was less than her current rate of pay), and her new rate of pay.

9. Ms. Shayda'a rate of pay was reduced 3 weeks later on September 21, 2009 in accordance with the September 1, 2009 letter.

10. Ms. Shayda continues to be employed by the employer.

11. Ms. Shayda's position is she was entitled to 8 weeks notice of this reduction in her wages. Since she only received 3 weeks notice, she seeks the difference between her original rate of pay and the lower rate of pay for a further 5 weeks. In her view, this difference, totalling $374.00, constitutes unpaid wages to which she is entitled under the Act.

12. Ms. Shayda also makes reference to a written communication which she received from an individual who appears to be employed by the Ministry of Labour. That document appears to quote selectively from some document. (The responding employer states that the quotes come from Part 19.4.1 of the Ministry of Labour's *Employment Standards Act, 2000 – Policy and Interpretation Manual.* That part of the *Manual* was substantially amended in January, 2011, in light of *Wronko* v. *Western Inventory Service Ltd.*, (2008) 90 O.R. (3d) 547 (Ont. C.A.). In any event, for reasons discussed below, nothing turns on either version of the *Manual.*) The selective quotes could be construed as suggesting that an employer is required to give an employee "notice" of any major change in the terms and conditions of employment.

Analysis:

13. Ms. Shayda's claim appears to be based on the following sections of the Act:

> **54.** No employer shall terminate the employment of an employee who has been continuously employed for three months or more unless the employer,
>
> (a) has given to the employee written notice of termination in accordance with section 57 or 58 and the notice has expired;
>
> ***

> **57.** The notice of termination under section 54 shall be given,
>
> ...
>
> (h) at least eight weeks before the termination, if the employee's period of employment is eight years or more.
>
> ***
>
> **60.** (1) During a notice period under section 57 or 58, the employer,
>
> (a) shall not reduce the employee's wage rate or alter any other term or condition of employment;

14. These sections would have prevented the employer from terminating Ms. Shayda's employment without providing her with eight weeks notice and further would have required the employer to maintain her at her original wage rate during that eight week notice period.

15. However, Ms. Shayda's employment has not been "terminated" within the meaning of the Act. Section 56 provides in part as follows:

> **56.** (1) An employer terminates the employment of an employee for purposes of section 54 if,
>
> ...
>
> (b) the employer constructively dismisses the employee and the employee resigns from his or her employment in response to that within a reasonable period;
>
> [Emphasis supplied.]

Assuming the reduction in pay experienced by Ms. Shayda constitutes constructive dismissal, she has not resigned her employment. Accordingly, her employment was not terminated.

16. To be clear, and again assuming the reduction in pay constituted constructive dismissal, Ms. Shayda would have been entitled to resign her employment in response to reduction in pay as of the date that the reduction in pay took effect and claim termination pay. Had she done so, she would have been entitled to termination pay: see section 61 of the Act. Further the termination pay would have been payable at her original wage rate. However, this entitlement under the Act would only arise if Ms. Shayda had actually resigned her employment. As noted, she did not do so.

17. Ms. Shayda's entitlements, if any, arise from the Act, not from any statements made to her by employees of the Ministry of Labour. Having said that, a careful review of the written communication received by Ms Shayda, shows that it is not inconsistent with the analysis set out above. That document contains the following statements:

> The employer makes a major change to the "terms and conditions of employment", and does not give the employee written notice that is equal to the notice that the employer would give the employee were the employer to terminate the employee's employment.

> . . .
>
> If the employee does not agree with the changes to the "terms and conditions of employment" this could be considered constructive dismissal.
>
> . . .
>
> The employee could quit and claim his termination pay.
>
> [Emphasis supplied.]

As noted, Ms. Shayda has not quit her employment.

18. Ms. Shayda notes that she is approaching sixty years of age and has many years of exemplary service with her employer. She argues that it is cruel to suggest that she had to choose between accepting a major change in the terms and conditions of her employment on the one hand and resigning her employment on the other. However much one may sympathize with Ms. Shayda's position, her entitlement under the Act requires that she make this choice.

19. In the result, even if all of the facts stated in the application are assumed to be true, the application does not make out a case that there has been a breach of the Act.

20. In the result, the application is dismissed.

3975-09-U Ontario Public Service Employees Union, Applicant v. **Art Gallery of Ontario**, Responding Party

Duty to Bargain in Good Faith – Unfair Labour Practice – OPSEU alleged that during bargaining the Art Gallery of Ontario did not disclose all information pertaining to funding for the reconstruction of the Gallery's Learning Centre and how that funding could lead to layoffs in the bargaining unit – OPSEU also claimed that the AGO accelerated the timing of layoffs after the union objected to the layoffs taking place during bargaining – The AGO denied any violation of the Act and asked the Board to exercise its discretion not to inquire into the complaint – The Board held there was no labour relations rationale to inquire into the first part of the complaint: the parties had reached a collective agreement in spite of OPSEU's suspicions, they had relatively stable labour relations, and they were not likely to face another expansion project as collective bargaining was, or was about, to take place – On the second issue, the Board found that there was labour relations rationale for inquiring into OPSEU's allegation of the accelerated layoffs – The Board found that OPSEU's allegations made out a *prima facie* case of a violation of section 70 of the Act – Because the first phase of the layoff schedule was implemented before the collective agreement was reached and because ten employees suffered lost work opportunities as a result of the accelerated layoffs, this portion of the complaint would warrant further inquiry by the Board – Matter continues

BEFORE: *Patrick Kelly*, Vice-Chair, and Board Members *P. LeMay* and *S. McManus*.

APPEARANCES: *David Wright* and *David Loney* appearing for the applicant; *Jonathan Maier* and *Duane Reid* appearing for the responding party

DECISION OF THE BOARD: May 5, 2011

1. This is an application under the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"), alleging violations of sections 17, 70, 72, 76 and 86 of the Act.

2. The application pertains to the round of bargaining between the parties that commenced in November 2009. In summary, the applicant ("the union" or "OPSEU") says the responding party ("the AGO" or "the employer") did not disclose information during the bargaining concerning funding for the renovation or reconstruction of the Gallery's Learning Centre and the impact that funding would have on layoffs in the bargaining unit. Moreover, the applicant contends that, after announcing a schedule of staggered layoffs, the AGO then accelerated the layoffs because of the union's position concerning them. The AGO takes the position that it disclosed information as it was obtained, that the layoffs that were imposed were completed in accordance with the applicable collective agreement and pursuant to a letter of understanding reached in the course of the bargaining that the employer was not obligated to apply at the time of the layoffs. The employer denies any violation of the Act, and furthermore contends that the applicant has failed to make out a *prima facie* case of a violation. In the alternative, if the Board finds that OPSEU's pleadings disclose a *prima facie* case of a violation of the Act, the AGO submits that the Board should exercise its discretion under subsection 96(4) of the Act not to inquire into the complaint, for reasons we will set out in detail below.

3. The hearing in this matter commenced on March 14, 2011. The parties requested that the Board deal only that day with, and ultimately determine, the AGO's preliminary motions before hearing any evidence if it becomes necessary to do so. Accordingly, this decision deals only with those motions. At the outset of the union's argument, counsel informed the Board that the OPSEU was no longer alleging a violation of section 76 of the Act.

4. The Board has long taken the approach in dealing with a *prima facie* motion to dismiss that it will only have regard to the facts alleged by the party against whom the motion is directed, as well as any agreed or undisputed facts. The Board then asks itself whether, based on that foundation of information, there is no reasonable prospect that the application can succeed. Only if the Board is satisfied that the application cannot succeed will it dismiss the application without a hearing. That being said, where a party urges the Board to exercise its discretion not to inquire into a complaint under the Act, the Board may take into account a broader set of circumstances. We will endeavour to describe briefly the applicant's allegations of material fact and to distinguish those from any other facts or circumstances that it may be necessary to consider in order to deal with both motions.

5. OPSEU represents two bargaining units of employees of the AGO, one of full-time and one of part-time employees. Both units share one collective agreement, which is more properly characterized as an amalgam of provisions applicable to the full time employees, and an addendum which incorporates a significant portion of the full time provisions in addition to clauses specifically applicable to the part-timers. This complaint deals with events in relation to the part-time unit. It consists of approximately 150 individuals.

6. The four-year collective agreement between the parties expired on November 30, 2009. OPSEU gave notice to bargain a renewed collective agreement on September 10, 2009,

and in doing so requested certain information from the AGO, including full disclosure of any initiatives "currently undertaken or to be undertaken…which will negatively impact on the bargaining unit members [including] but not…limited to layoffs, divestments, disposition of property and facilities, acquisitions, mergers, and relocation of staff to other facilities." Although OPSEU's pleadings make no reference to a response by the AGO, it appears undisputed that the AGO did respond to the union's notice to bargain by way of correspondence dated November 27, 2009 from Deborah O'Leary, the Director, Staff & Volunteer Resources. The fourth full paragraph of Ms. O'Leary's letter states:

…

> 4. The only initiative that the Gallery has planned currently is the Education Centre. At this time we do not know the impact on staffing in the Education Division but will advise you when this is known.
>
> The Gallery also advises that where it is necessary to adjust staffing as a regular course of operations, the Gallery will fully comply with the provisions of the collective agreement.

…

7. During the course of negotiations (the chronology of which is described in the following paragraph), OPSEU was aware that the AGO planned a renovation or reconstruction of its Education Centre, otherwise referred to as the Learning Centre.[1] OPSEU understood from information provided by the AGO and from other sources that the project might require some staff relocation and possibly some layoffs, but not the entire closure of the Learning Centre. In order to deal with the potential for layoffs in the Learning Centre, the union tabled proposals to change the layoff language in the collective agreement and to include a new Letter of Understanding covering the Learning Centre modeled on the collective agreement's previous Letter of Understanding respecting an expansion of the employer's facilities.

8. Bargaining began on November 30, 2009 and continued on January 11, 12, 13, 20 and February 4, 2010. The AGO alleges in its response the following facts which appear to be undisputed:

> - On January 20, 2010, in response to a union proposal to amend a letter of understanding in the expired collective agreement, the AGO proposed, and the union accepted, a new letter of understanding that provided employees in the Learning Centre with notice superior to that contained in the collective agreement in the event of any layoffs as a result of any renovation/reconstruction;
>
> - in the course of the bargaining on February 4, 2010 OPSEU's negotiating team advised the AGO that the union would be seeking the appointment of a conciliation officer;

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[1] The AGO asserts, and it appears the union is not in a position to dispute, that the renovation/reconstruction of the Learning Centre was a project that had been anticipated since 2008 when the AGO received and announced publicly a private $12 million donation to that end. The cost to complete the project, however, was in the neighbourhood of $20 million, and therefore the project could not commence until further funding emerged from some other source. As will be seen, that source turned out to be the Federal Government, which agreed to provide the additional funding in 2010.

- on February 19, 2010 the Federal Government issued a media advisory notification concerning an infrastructure funding announcement affecting the AGO to follow on February 22, 2010; and

- on February 22, 2010 the AGO issued a press release announcing the Federal Government's decision to contribute approximately $7.5 million in funding to the renovation/reconstruction of the Learning Centre.

9. The union applied for the appointment of a conciliation officer on March 3, 2010, and one was appointed on March 12, 2010. The union anticipated meeting with the conciliation officer in the second or third week of April 2010. It appears undisputed that a conciliation meeting took place in mid-April, and that the parties reached a collective agreement as a result.

10. On March 10, 2010, prior to the appointment of the conciliation officer, the AGO notified OPSEU's President that it was contemplating indefinite layoffs as a result of the Learning Centre project. Pursuant to the terms of the expired collective agreement, the AGO scheduled a Labour/Management Committee meeting on March 15, 2010 to deal with "alternatives to layoffs" as set out in a previous settlement between the parties concerning a facility expansion. At that meeting, the union's chief spokesperson in bargaining, David Loney, learned for the first time that the AGO intended to close the Learning Centre completely during the course of the renovation, and to lay off 39 of the part-time bargaining unit members in a staggered manner, beginning with ten layoffs on April 1, 2010, followed by further group layoffs in June, July and September 2010. The September layoff was to include ten Studio Instructors.

11. Mr. Loney objected, taking the position that such layoffs during bargaining constituted an unfair labour practice. He demanded that the AGO not impose the layoffs until such time as the parties returned to the bargaining table to endeavour to negotiate the changed circumstances and until a collective agreement was reached.

12. Later the same day, the AGO notified OPSEU of the expected implementation of the layoffs together with a list of the 39 affected employees and the dates on which they would effectively be laid off. That list indicated that 26 employees would be laid off on April 1, seven on June 1, four on July 1 and two on September 3, 2010. This represented an acceleration of the schedule of layoffs communicated to Mr. Loney earlier that day. The ten Studio Instructors who were to have been laid off in September would instead now be laid off on April 1, 2010. No explanation appears to have been offered by the AGO to OPSEU for the change. According to OPSEU, the AGO suggested to members of the bargaining unit that it had to alter the previous planned layoff dates as a result of actions taken by OPSEU.

13. On March 16, 2010, the AGO issued notices of layoff to a number of employees, some of which pertained to the April 1 layoff and some to layoffs commencing on June 1 and July 1. The notices referred to the 60-day working notice period under the new Letter of Understanding described in paragraph 8 of this decision, as well as the notice requirements in the layoff provisions of the expired collective agreement. The notices purported to give the affected employees the benefit of both notice periods in combination, and further advised that, in the event the employee did not receive adequate working notice of the layoff, the AGO would make up the difference with payment in lieu of notice.

14. OPSEU states that:

- in imposing layoffs without first raising these matters with OPSEU and without first bringing these issues forward at the bargaining table and negotiating with OPSEU with respect to these issues, the AGO has violated section 17 of the Act;

- in imposing layoffs during the course of bargaining and without the consent of OPSEU, the AGO has violated section 86(1) of the Act;

- in imposing layoffs without having advised OPSEU of these changed circumstances and without having bargained with OPSEU as to the impact of these changed circumstances, the AGO has violated section 70 of the Act; and

- in adjusting the dates for implementation of the layoffs, and in significantly increasing the number of layoffs to take effect on April 1, 2010, as a result of the position taken by OPSEU at the meeting of March 15, and in suggesting to employees that it was taking this action as a result of actions by OPSEU, the AGO has interfered with the administration of the trade union and its representation of its members in violation of section 70 of the Act and section 72 of the Act.

Analysis and Conclusions

15. We turn first to the AGO's motion that the Board ought not to inquire further into this application. Subsection 96(4) of the Act makes clear that "the Board *may* inquire into the complaint of a contravention" of the statute (emphasis added). Whether the Board will do so is a matter of the exercise of discretion.

16. *Service Employees International Union Local 204*, [1995] O.L.R.D. No. 5443 is a Board decision that involved a duty of fair representation complaint against a trade union. That is a different kind of proceeding than the one before us, but it nonetheless was a complaint under the Act contemplated, like this one, by subsection 96(4). In that matter, the Board pointed out that litigation before the Board is usually an expensive and time-consuming exercise. Furthermore, the Board's limited hearing capacity is such that it becomes necessary to expend the Board's resources "in a way that is consistent with the objectives of the statute, will best accomplish its statutory mandate, and is sensitive to practical labour relations realities." (paragraph 10) The Board went on to say in paragraph 10:

> … Accordingly, in exercising its discretion under section 91(1) [now s.96(4)] the Board may wish to consider: whether the complaint makes out a [sic] arguable case for a breach of some section of the Act; the chance of success; the nature and utility of any remedy that might flow; the cost implications for the parties and the public; and whether, overall, some statutory or labour relations purpose would be served by the litigation exercise.

17. In the end, the Board decided not to inquire further into the matter because the issue involved a relatively minor, and ultimately likely academic, dispute which did not warrant the

expense of a public hearing and would not result in anything more by way of remedy than a declaration.

18. In contrast, the concern of the applicant in the matter before us is not minor. A greater number of the applicant's members lost work and wages than the applicant had anticipated, and a subset of those were laid off earlier than the employer had previously indicated. The union says that by being deprived of information concerning the full impact of the Learning Centre renovation, it lost an opportunity at the bargaining table to address a larger than expected layoff of the bargaining unit employees. And it says the employer's acceleration of the schedule of layoffs was unlawfully motivated. These allegations raise serious issues.

19. Having said that, the union still entered into a collective agreement with eyes wide open, that is, with full knowledge of, and despite, the circumstances giving rise to the charge of bad faith bargaining. As the Board observed at paragraph 46 in *Brant Haldimand-Norfolk Catholic District School Board*, [2001] OLRB Rep. March/April 292, the Board has never been "keen to proceed with bad faith bargaining complaints, if the parties have settled their differences and entered into a collective agreement." This case has two main components, a bad faith bargaining element and an aspect of anti-union animus.

20. The union submits that it should be permitted to proceed with the bad faith bargaining charge despite having reached a collective agreement because there may well be further renovations or expansion projects undertaken by the AGO in future, and that therefore it is necessary that the employer understand the true scope of its duty to disclose information in a timely manner over the course of bargaining. In support of that argument, the union relies upon *Construction Labour Relations Assn. of Ontario*, [2007] OLRB Rep. May/June 607. That matter involved an unfair labour practice complaint in the construction industry, pitting some constituent members of a designated employer bargaining agency as the complainant on one hand, against other constituent members of the same employer designated bargaining agency and the designated employee bargaining agency, as respondents, on the other. Essentially, the complainant took the position that the respondents, by negotiating and entering into trade appendices, knowingly interfered in the complainant's administration as a designated employer bargaining agency. The effect of their conduct, said the complainant, was that the designated employer bargaining agency was thrown into an internal deadlock which rendered it impotent to carry on collective bargaining, resulting in a lawful strike in the ICI sector. According to the complainant, the respondents thereby violated section 71 of the Act. The respondents requested the Board to exercise its discretion to refuse to inquire into the complaint. The Board declined the request, pointing out that, without a resolution, the same issue would undoubtedly arise in future rounds of collective bargaining.

21. In our view, the *Construction Labour Relations Assn. of Ontario* is distinguishable on its facts from the case before us. Most notably, the parties in that case had not at the time the matter came before the Board negotiated a renewal collective agreement. In fact, there was a strike going on precisely because of the absence of any collective agreement. In those circumstances, the Board was hardly in a position to say there was no labour relations reason to inquire into the complaint. That is not the situation here. The parties are in a comparatively stable labour relations condition, having reached a collective agreement despite the union's suspicion that the AGO sat on important information that should have been disclosed to OPSEU at an earlier stage in the collective bargaining process. Moreover, unlike the scenario in the *Construction Labour Relations Assn. of Ontario* case, it is largely speculative to suggest the parties in this matter will likely find themselves in a similar situation, facing another expansion

project as collective bargaining is, or is about to get, underway. We are not persuaded that this is a valid reason to inquire into the bad faith bargaining portion of the complaint, particularly as such an inquiry will likely involve substantial investment of time and resources to complete the litigation.

22. For these reasons, in the absence of a compelling labour relations rationale, we have determined that this is an appropriate case to exercise our discretion not to inquire into the bad faith bargaining component of this application. Accordingly, it is not necessary to determine whether or not the union has made out a *prima facie* regarding a breach of section 17 of the Act.

23. On the other hand, there is, in our view, a labour relations purpose for inquiring into OPSEU's allegation concerning the accelerated layoffs. The essence of the union's allegation in that regard is that the AGO, in response to the objections raised by OPSEU's chief spokesperson with respect to AGO's plan to implement a layoff, embarked on a more condensed schedule of layoffs than it had previously proposed. Moreover, according to OPSEU, the AGO laid the blame for the change at the feet of the union. Ten employees were adversely affected by the layoff scheduling change in that their layoffs were moved up by several months, which resulted in a lost work opportunity for those individuals. The fact that the parties ultimately reached a collective agreement does not, in our view, change or ameliorate the concern raised by the union in this portion of the unfair labour practice complaint. By the time the collective agreement was reached, the first phase of the layoff schedule had been implemented. Arguably, the Studio Instructors were negatively impacted by the acceleration of their layoffs, and presumably that negative impact could be remedied by compensation if the Board were to find that it amounted to a violation of the Act. In our view, the employer must explain why it was necessary to hasten their layoffs. Finally, it seems unlikely to us that litigation of this portion of the unfair labour practice complaint will necessarily be prolonged and expensive.

24. Having determined that there is a sound labour relations purpose to inquire into the circumstances of the accelerated layoff, we must consider whether or not the union's allegations in that regard make out a *prima facie* case of a violation. We think that the union's alleged facts, if proven, could lead to a finding of a breach of section 70, if not other provisions, of the Act. The alleged conduct complained of, in our view, could be characterized as more than merely an incidental interference with the administration of a trade union or its representation of employees: see the discussion on incidental interference at paragraphs 73 to 76 of *Hydro One Inc.*, [2005] OLRB Rep. November/December 969. We are not able to say conclusively that OPSEU has no reasonable prospect of success in making out a violation of section 70. Accordingly, we reject the AGO's *prima facie* motion to dismiss the application on this basis.

25. In summary, we decline to inquire into the union's allegations of bad faith bargaining in respect of the issue of disclosure of information in the course of negotiations because we see no compelling labour relations purpose to do so. Secondly, we find that the union's allegations concerning an acceleration by the AGO of the layoff schedule disclose a *prima facie* case of a violation of the Act, and warrant further inquiry by the Board.

26. The parties are invited to provide the Acting Registrar with their availability for the continuation of the hearing in this matter.

1169-10-OH Shawn Marc Amerlinck and Michael-John Knoblauch, Applicants v. **Brighton Court Apartments c/o Realstar Management**, Bruce Maki, Wendy Nason Maki, Paul Halowaty and Deborah Warren Logar, Responding Parties

Evidence – Health and Safety – The responding parties brought a motion to strike certain pleadings of the applicants which relied on transcripts of recordings, surreptitiously taped telephone conversations between some of the individual responding parties – The applicants argued there should be no reasonable expectation of privacy because the conversations took place over a public line and in addition were or could have been overheard by third parties standing near one of the conversants – The Board held that the evidence sought to be adduced was relevant and, subject to any claims about authenticity, the best evidence as to what was said – Illegally obtained evidence is not, per se, inadmissible – Motion denied – Matter continues

BEFORE: *Ian Anderson*, Vice-Chair.

APPEARANCES: *Michael-John Knoblauch* and *Shawn Amerlinck* appearing for the applicant; *Hal P. Rolph, Donna Milito* and *Paul Holowaty* appearing for the responding party.

DECISION OF THE BOARD: May 24, 2011

1. This is an application under section 50 of the *Occupational Health and Safety Act* alleging unlawful reprisal in relation to the exercise of rights under the Act.

2. The style of cause is hereby corrected to include the following individual responding parties named in the application: Bruce Maki, Wendy Nason Maki, Paul Halowaty, Deborah Warren Logar.

3. This decision addresses a preliminary motion by the responding parties to strike certain of the applicants' pleadings. The applicants seek to rely on transcripts of recordings of certain telephone conversations between some of the individual responding parties. The responding parties object to the introduction of this material. The responding parties argue that the conversations in question were private, the applicants were not parties to those conversations and that accordingly the interception and recording of those conversations by the applicants was illegal. The responding parties argue the Board should exercise its discretion not to receive this evidence.

Background

4. The applicants, Shawn Marc Amerlinck and Michael-John Knoblauch, worked as "Assistant Resident Managers" at the Brighton Court Apartment complex. Brighton Court was managed by Realstar Management Partnership. As the Assistant Resident Managers, the applicants were employees of Realstar and lived in an apartment at Brighton Court (the "Assistant Resident Managers' apartment").

5. At the relevant time, Bruce Maki and Wendy Nason Maki were employed by Realstar as the "Resident Managers" at Brighton Court. As such, they also lived in an apartment at Brighton Court (the "Resident Managers' apartment").

6. At the relevant time, Paul Halowaty was a District Manager for Realstar and as such exercised supervisory responsibilities over Assistant Resident Managers and Resident Managers within the district for which he was responsible. Brighton Court fell within Mr. Halowaty's district.

7. Deborah Warren Logar is the Director of Human Resources for Realstar.

8. In April 2010 the applicants complained to Mr. Halowaty that they had been subjected to assaults and workplace harassment by the Makis. In these proceedings, the applicants allege that they experienced reprisals at the hands of the responding parties as a result of having made those complaints. Ultimately, the applicants allege, those reprisals amounted to constructive dismissal and caused them to quit their employment.

The Recordings

9. There is a phone line which is common to the Assistant Resident Manager and Resident Manager apartments. It also rings in the office and in a workshop used by the Assistant Resident Managers and the Resident Managers in the course of their duties. All of the conversations in question were recorded on this phone line, which I will refer to as the "business line".

10. The office is located on the lobby of the Apartment complex. The door to the office is frequently open. The applicants allege that on several occasions they overheard conversations in the office between the responding parties in which the responding parties "plotted on how to get rid of us". Those conversations piqued the applicants' interest in what the responding parties were saying about them over the phone.

11. In their apartment, the applicants have a two line phone: one line is the business line; the other is a private line. There are two lights on the phone, one associated with each line: when the light is on, it indicates that someone is on the associated line.

12. The applicants started picking up the handset on the phone in their apartment and listening in when they observed that someone was talking on the business line. They recorded some of these conversations. Later, the applicants managed to set up a recording device in such a way that they could record the calls on the business line without picking up the handset in their apartment. The transcripts in issue relate to recordings made in one of these two ways.

Arguments

13. The responding parties rely upon the following sections of the *Criminal Code*, R.S.C. 1985, c. C-46:

> **183.** In this Part,
>
> ...
>
> "intercept" includes listen to, record or acquire a communication or acquire the substance, meaning or purport thereof;

> ...
>
> "private communication" means any oral communication, or any telecommunication, that is made by an originator who is in Canada or is intended by the originator to be received by a person who is in Canada and that is made under circumstances in which it is reasonable for the originator to expect that it will not be intercepted by any person other than the person intended by the originator to receive it, and includes any radio-based telephone communication that is treated electronically or otherwise for the purpose of preventing intelligible reception by any person other than the person intended by the originator to receive it,
>
> **183.1** Where a private communication is originated by more than one person or is intended by the originator thereof to be received by more than one person, a consent to the interception thereof by any one of those persons is sufficient consent for the purposes of any provision of this Part.
>
> * * *
>
> **184.** (1) Every one who, by means of any electro-magnetic, acoustic, mechanical or other device, wilfully intercepts a private communication is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

14. The responding parties note that section 111(2)(e) provides:

> Without limiting the generality of subsection (1), the Board has power,
>
> ...
>
> (e) to accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not,

15. They note that this provision gives the Board discretion as to whether or not to accept evidence. They refer to *D.H.L. International Express Limited*, (1995) 99 di 126 (CLRB) in which the then Canadian Labour Relations Board, exercising a similar discretion, refused to receive a surreptitious recording of a conversation into evidence in an unfair labour practices proceeding. The CLRB noted that such tapes were legally admissible before it but considered that there would be negative labour relations policy implications from the receipt of such evidence and accordingly declined to do so. The responding parties argue that by analogy in this case the Board should give effect to the privacy interests that are of sufficient importance to be protected by the *Criminal Code*, and decline to receive the transcripts into evidence. They also note that privacy interests have been recognized in a labour relations context and cite *Versa-Care Ltd.*, (1996) 54 L.A.C. (4th) 88 (M.R. Newman).

16. The responding parties fully and fairly acknowledge that this Board has received tapes of surreptitiously recorded conversations into evidence and refers the Board to *1425786 Ontario Inc. (c.o.b. Wylie Electric)*, [2003] OLRB Rep. Jul./Aug. 687 and *Presot Muccini Urban Management Group Inc.*, [2008] O.L.R.D. No. 1424. The responding parties argue, however, that those cases are distinguishable. In particular, the responding parties argue in *Presot Muccini* there was no expectation of privacy because the recorded statement was one which took place between a member of management and an organizer for the union. In any event, the responding

parties argue in both cases the recording was made by one of the parties to the conversation. Thus, the recording of the conversation was not arguably contrary to section 183 of the *Criminal Code*.

17. The applicants respond that the business line on which the conversations took place was a public line, in the sense that it could be accessed from four different locations in the building. In addition, many of the conversations were or could be overheard by someone standing in the lobby by the door to the office which is always open. In these circumstances, they argue, there was no reasonable expectation of privacy. They also argue that the Board's function is to determine the truth and that it will not be able to discharge this function unless it hears all of the evidence.

Analysis

18. *D.H.L. International Express Limited* was fully considered in *Wylie Electric*. *Presot Muccini* adopts the reasons of *Wylie Electric*, as do I. As *Wylie Electric* addresses many of the other arguments of the responding parties, in my view it is worth quoting from it at length.

> 6. Any ruling about the admissibility of evidence must start from certain basic principles. Since the purpose of evidence is to establish certain facts on the basis of which each party seeks to make their case, all evidence that is relevant and probative of a matter in the case should be admitted. There are of course certain exclusionary rules. Hearsay evidence is not generally admitted, as it would be impossible for the other party to properly cross-examine on it. Because of that the evidence may be too unreliable to accept. Certain other evidence is excluded despite its reliability and probative value because of some greater social or legal value, e.g. evidence protected by solicitor-client privilege.
>
> 7. In this case, the relevance and general admissibility of the evidence is self-evident. The conversations between Mr. Wylie and the three individuals are clearly relevant to the applicant's case. There is no reason not to hear the evidence of what each of them says occurred during the conversation. If each of the individuals had made notes immediately after or during the conversations, they would be entitled to refresh their memories with the notes and might be cross-examined on them.
>
> 8. The tape recordings or transcripts of the tapes might be relevant if, as seems possible from the pleadings, there is a conflict in the witnesses' evidence. The theoretical attraction of a tape recording is that as a mechanical device it will, if properly set up, record what is said without editing or altering the words. Tone and phrasing may also be more readily revealed. They are, *prima facie*, admissible: *R.* v. *Pleich* (1980) 55 C.C.C. (2d) 13 (OCA) and *R.* v. *Rowbottham* (1980) 25 O.A.C. 321. The limitation of such recordings is that they may be altered or distorted in the hands of the person making the recording. The "Watergate tapes" remain a source of fascination to many. Hence issues of accuracy are of no small significance. Once that accuracy is established, the recording is simply a potentially superior form of contemporaneous note taking.
>
> 9. The real question is whether there is, or should be, an exclusionary rule which would exclude such evidence on the basis of a social or legal policy

which is of greater public value than the process of finding facts in this case. The responding party asserts there is, and the Union says there is not and should not be.

10. The most compelling reasoning to suggest that there should be an exclusion of such evidence is that found in the decision of Arbitrator Joyce in *Greater Niagara General Hospital* (1989) 5 L.A.C. (4th) 292. Arbitrator Joyce was rightly concerned with the destructive effect that the possibility that conversations were surreptitiously being recorded would have on the on-going relationship between parties to a collective bargaining relationship. It is hard to disagree with his thesis. He argues that an arbitrator is mandated to assist the parties to resolve one contractual dispute in an on-going relationship that will not function without a minimum degree of mutual respect, trust and goodwill. In doing so, the arbitrator ought not to take a step which would undermine that relationship outside the context of the specific grievance. He said at pp. 301-2:

> I am compelled to exercise my discretion when the admission of evidence would serve to destroy or deteriorate [sic] the longer-term relationship between the parties or, more importantly, supply a measure of jurisprudence that would cause the parties of other relationships to frisk each other before a meeting would commence.

11. The Board has a role as well, but other than applications in the construction industry under section 133 of the Act, it does not have the responsibility of contractual dispute resolution in the context of an on-going relationship between the parties. It does have a responsibility to enforce the Act and the policies inherent in the Act regardless of the parties' wishes. The Board is cognizant of the need to try to ensure that parties are able to create a stable collective bargaining relationship (e.g. in the determination of bargaining unit descriptions), but the Board's primary duty is the enforcement of the Act. It will do so in a way that is most likely to enhance the possibility of a solid bargaining relationship where possible and appropriate, but that is not the focus of the Board's mandate.

12. The decision of the Canada Labour Relations Board relied on by the responding parties, *D.H.L. International Express Limited* (1995) 99 di 126, does not stand for the proposition asserted by them. In that case the Board suggested that the following be considered as factors in determining whether or not to admit the evidence:

> The competing interests which the Board must address when applying its discretion, pursuant to section 16(c) of the Code, to "receive and accept" taped evidence are multifaceted; they include the burden of proof that must be met in the case; the destructive impact on the climate of industrial relations between the parties; the unreliability of such evidence; the ability of the parties to adduce *viva voce* evidence and be subjected to cross-examination thereon; the demand that the process be fair and be perceived as fair; the necessity to ensure full disclosure which will in turn facilitate advance settlement of the case. To remain credible, the Board must sacrifice some of the formality demanded of judicial proceedings in order to ensure that the broader labour relations interests are served and that the dispute is resolved as expeditiously as possible.

> In that case the lack of disclosure was found to be fatal to the introduction of the evidence.
>
> 13. The decision of the British Columbia Industrial Relations Council, *Focus Building Services Ltd.* (1987) No. 31/87, is closer to the reasoning in Arbitrator Joyce's decision, although it is evident from that decision that the Council had rendered cases coming to different results in different circumstances. At p. 4 the decision states:
>
>> In my opinion, the "floodgate" argument advanced by the majority in Michael Miletich, supra, cannot be disregarded. The original panel's acceptance of this evidence would certainly establish a precedent for other cases. If tape recorded conversations were to be accepted by the Council it would only be a matter of time before it becomes common practice. If one party begins to tape conversations, the other side will have no choice but to follow suit. The use of tape recorders would surely result in parties being much more careful about what is said and how it is said rather than engaging in the candid discussions necessary to achieve a settlement. In my experience as a provincial mediator the tape recording of negotiations was certainly counter-productive to the collective bargaining process. I am satisfied that the admittance of such evidence would encourage a climate inconsistent with the Council's mandate under Section 27(a); "... securing and maintaining industrial peace ..." Section 27(b); "... improving the practices and procedures of collective bargaining ..." and Section 27(c); "... promoting conditions favourable to the orderly and constructive settlement of disputes ...".
>
> 14. With all due respect, it is difficult to understand how what is desirable in the context of mediation for the renewal of a collective agreement can be applied to the circumstances of this case (or indeed the facts in *Focus Building Services*). The allegation in the case is that the responding parties have violated several sections of the Act in a manner that is designed to ensure that Wylie Electric never has any sort of relationship with the applicant. It is hard to understand why the actions of one party, which the responding parties may find distasteful, and which may suggest a lack of mutual trust but are not unlawful or dishonest, should be excluded if the allegation is that the employer has violated the Act in an attempt to ensure that its employees or potential employees are unable to exercise their rights under the Act. Whether or not the employer has done so cannot be determined until the end of the case. However, if the applicant is correct, it does not lie in the mouth of the employer to raise concerns about the effect on an ongoing relationship; if the application fails, there will be no relationship in any event.
>
> 15.1 I conclude therefore that there is no policy reason to exclude any evidence that may exist of tape-recorded conversations as alleged in the application. Beyond that it is not necessary or appropriate to rule in how and when they will be received during the course of the case. The panel hearing this application will determine that.

19. In short, the evidence is clearly relevant and, subject to any concerns about authenticity, the best evidence as to what was said. The concerns about the destructive impact on ongoing relationships considered by the Canada Labour Relations Board in *D.H.L. Limited* and

by some arbitrators, as in *Versa-Care Ltd.*, arguably have no application when what is sought is enforcement of rights under the Act, in particular where there is no ongoing relationship as is the case here.

20. It is true that in this case, unlike *Wylie Electric* and *Presot Muccini*, the recording was not made by a party to the conversation and thus was arguably contrary to section 183 of the *Criminal Code*. I note again that the applicants argue that there was no reasonable expectation of privacy in the circumstances of the communication with the result that the recording is not contrary to section 183 of the *Criminal Code*. But even if the recording were illegal, the responding parties in this case did not argue that it was per se inadmissible as a result. It appears that they were right not to do so. In *Osiris Inc.* v. *1444707 Ontario Ltd.*, 2005 CanLII 47731 (ON SC) the court stated at paragraph 75: "It is still the law that illegally obtained evidence is not, per se, inadmissible in civil proceedings."

21. Similarly, in *Elgin Construction Company Limited*, [1987] OLRB Rep. Jan. 45, the Board stated:

> While section 103(2)(c) [now 111(2)(e)] of the Act may give the Board the discretion to refuse to admit relevant evidence, as counsel for the applicant argues based upon *Olympia Floor and Wall Tile Co.*, [1986] OLRB Rep. Feb. 270, we believe that section 102(13) of the Act, which states, in part:
>
> > "The Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings *to present their evidence* and to make their submissions...
> >
> > [emphasis added]
>
> provides a positive direction to the Board to receive evidence that would be relevant, cogent and material to the issues. Proceedings before the Board are not criminal trials. Therefore, we believe that section 24(2) of the *Canadian Charter of Rights and Freedoms* has no application to the reception of evidence in this proceeding.
>
> We believe that the common law rules with respect to the admissibility of relevant evidence, as set out in *The Queen* v. *Wray* (1970) 11 D.L.R. (3d) 673 (S.C.C.) is the preferable approach to follow in proceedings before the Board. Mr. Justice Martland, for the majority, wrote at page 685:
>
> > "...I am not aware of any judicial authority in this country or in England which supports the proposition that a trial Judge has a discretion to exclude admissible evidence because, in his opinion, its admission would be calculated to bring the administration of justice into disrepute. The test of admissibility of evidence was stated by Lord Goddard, C.J., in *Kuruma* v. *The Queen*, [1955] A.C. 197 at p. 203, as follows:
> >
> > > 'In their Lordships' opinion the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained.'"

> We are concerned here with determining the facts relevant to the issues that arise in the certification proceeding. If the evidence is relevant and material to the issues it ought to be admitted. Even though we acknowledge that we have the discretion to refuse to admit relevant evidence, we believe that the manner in which the evidence was obtained is not a proper basis upon which to exercise that discretion.

22. For all of the foregoing reasons, the responding parties' motion to strike the applicants' references to the recorded conversations because of the manner of their recording is denied. The responding parties' remedy, if any, lies elsewhere. Nothing in this decision, however, precludes the responding parties from challenging the accuracy or authenticity of the transcripts in the proceedings before this Board.

23. In the alternative, the responding parties requested production of the complete recordings of all conversations upon which the applicants seek to rely. The applicants did not resist this request. The applicants are hereby ordered to produce copies of all such recordings to the responding parties within two weeks of the date of this decision.

0268-11-G Universal Workers Union, Labourers' International Union of North America, Local 183, Applicant v. H & R Developments and/or **Cantertrot Investments Limited**, Responding Party v. Toronto Residential Construction Labour Bureau, Intervenor

Construction Industry Grievance – Employer – Health and Safety – The union alleged the responding party violated the collective agreement when it barred the union's representatives from attending at its job site – The responding party acknowledged barring the representatives because the union refused to provide it with an approved registration as required by the *Occupational Health and Safety Act* – The responding party argued that the union is an "employer" and its representatives attend the job sites as "workers" – Although the collective agreement provides that representatives shall have access to working areas, the responding party argued that complying with the contract would violate a direct order of a health and safety inspector – The Board found that the registration form related to "constructors" and "employers engaged in construction" – The union representatives, like others authorized by law to access the site (police, firefighters, municipal or health and safety inspectors), are not there at the behest of the constructor, nor under the constructor's direction or control – These "employers" are not bound to complete the OHSA form – Grievance allowed

BEFORE: *Harry Freedman*, Vice-Chair, and Board Members *John Tomlinson* and *Alan Haward.*

APPEARANCES: *Stephen B.D. Wahl, Frank D'Abbondanza, Dominic Pilleggi* and *Seyfi Tomar* for the applicant; *Geoff Ryans, Peter DiBiasio, Frank Provenzano* and *Andy Mackenzie* for the responding party; *Geoff Ryans* and *Richard Lyall* for the intervenor.

DECISION OF THE BOARD: May 11, 2011

1. This is a referral of a grievance to the Board for determination under section 133 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") that came before the Board for hearing on May 9, 2011. The applicant alleges the responding party violated section 8.03 of the collective agreement when it barred the applicant's business representatives from attending at its job site. The responding party acknowledges it barred them from its job site because the applicant refused to provide the responding party with an approved registration form (Form 1000) as required by the *Occupational Health and Safety Act*, R.S.O. 1990, c. O. 1 as am., ("OHSA") and by an order issued by an inspector under OHSA on February 24, 2011.

2. Although the applicant in its grievance material and referral alleged the responding party contravened the collective agreement and various provisions of the Act, it was content to have the Board deal with the matter as relating only to whether the responding party contravened the collective agreement. It was not seeking any additional remedies under the Act.

3. There appeared to be no material facts in dispute and as a result, after the Board reviewed the pleadings with the parties the matter proceeded directly to argument. Given the nature of the issues and the agreed facts, the Board directed the responding party (who was represented by the same counsel as the intervenor) to proceed with its argument first. After hearing the submissions from the responding party, the Board recessed and when it returned it advised the parties it did not need to hear from the applicant.

4. The Board ruled orally at the hearing that the grievance was allowed and that it would provide the parties with its written reasons shortly. These are the reasons for the Board's decision allowing the grievance.

5. The responding party is bound to the collective agreement between the applicant and the intervenor expiring April 30, 2013 (the "Residential Agreement"). The intervenor is an accredited bargaining agent as a result of the Board's decision in *Toronto Residential Construction Labour Bureau*, 2001 CanLII 18655 in which the Board issued a certificate of accreditation to the intervenor. The responding party was one of the employers listed in that decision as coming within the bargaining unit represented by the intervenor.

6. The responding party is responsible for a residential construction project at Weston Road and Sheppard Ave. in Toronto. Following an investigation carried out by Martin McIntaggart, an inspector under OHSA, of a workplace fatality at that project Mr. McIntaggart issued a number of orders under OHSA in FV No. 6084673 on February 24, 2011. Order No. 5 issued pursuant to section 5(2) of O. Reg. 213/91 states, in part:

> The constructor shall ensure that,
> (a) each employer at the project provides to the constructor a completed approved registration form; and
> (b) copy of the employer's completed form is kept at the project while the employer is working there.

The responding party is the constructor referred to in Order No. 5. Order No. 5 also pointed out registration forms were missing for two named employers and for the employer of a named individual. Order No. 5 did not state the responding party was required to obtain a registration form from the applicant.

7. The responding party subsequently barred the applicant's business representatives from attending at its project because the applicant refused to provide the responding party with an approved registration form (Form 1000). The responding party contended Mr. McIntaggart's order together with O. Reg. 213/91 under OHSA required any employer coming on to its project to provide it with the approved registration form. It believes the applicant is an employer within the meaning of OHSA and that its business representatives are workers within the meaning of OHSA. Therefore, when the applicant's business representatives come on to the site, the applicant is an employer at the project and as such, the responding party must ensure the applicant provides it with an approved registration form.

8. The applicant relies on section 8.03 of the Residential Agreement which provides:

> The Business Representative of the Union shall have access to all working areas during working hours, but in no case shall his visit interfere with the progress of the work, when visiting a job, he will first advise and identify himself to the Job Superintendent or other Supervisory Personnel of the Employer.

The responding party accepts section 8.03 gives the applicant's representatives access to its sites, provided they meet the conditions for doing so, but submits it cannot be compelled to comply with that provision of the Residential Agreement if doing so would violate OHSA or be contrary to an inspector's order.

9. The responding party also referred to Letter of Understanding No. 17 in the Residential Agreement to argue the applicant is bound to approach health and safety issues in a co-operative way. It submits it is only asking the applicant to provide a Form 1000 because that is what Mr. McIntaggart's order appeared to require. Letter of Understanding No. 17 provides, in part:

> The parties agree that occupational health and safety is vitally important to all employees working under the Agreement.
>
> ...
>
> Therefore the parties agree to support the goal of providing a healthy and safe workplace encouraging and facilitating:
>
> - A cooperative attitude and approach to health and safety in the workplace by all persons;
> - Attendance at all relevant health and safety training programmes run by the Training Centre;
> - Compliance with the provisions of the *Occupational Health and Safety Act* and its Regulations.
> - Compliance with the objectives and provisions of legitimate and valid employer health and safety policies; and
> - Effective communication and pro-active approach to all health and safety matters.
>
> The parties are confident that by encouraging the foregoing principles of education, cooperation, and responsibility that they will be able to promote and achieve a safe workplace for all persons.

10. Section 5 of O. Reg. 213/91 provides:

> (1) Before beginning work at a project, each constructor and employer engaged in construction shall complete an approved registration form.
>
> (2) The constructor shall ensure that,
>
> > (a) each employer at the project provides to the constructor a completed approved registration form; and
> >
> > (b) a copy of the employer's completed form is kept at the project while the employer is working there.

The responding party acknowledged that section 5(1) makes reference to an "employer engaged in construction" providing a registration form, but submits that same limitation is not found in section 5(2). It contends section 5(1) and 5(2) must be read independently of one another.

11. The responding party also argued, in any event, the applicant's business representatives who come on the job to enforce various collective agreements often will undertake measurements and engage in activities on the project when construction work is taking place. While the business representative may not be doing construction work, that individual is nevertheless facing the same risks as any one on the site who is engaged in construction work or is on the site at the behest of an employer engaged in construction at that site.

12. The approved registration form (Form 1000) is entitled "Registration of Constructors and Employers Engaged in Construction". It requires the registrant to indicate the nature of its business by checking one of "individual, sole proprietorship, partnership, corporation, joint venture". It also requires the registrant to provide other information relating to its structure, the number of employees it will have at the site and its principal officers and directors. The responding party acknowledges the form does not appear to be directed at trade unions, but argues the form cannot be used to derogate from the obligations imposed by the Act, regulation and inspector's order.

13. The responding party submits the order and the regulation are clear. The applicant is an employer within the meaning of OHSA. The applicant acknowledges it is an employer as defined by OHSA but contends it is not an employer for purposes of section 5 of O. Reg. 213/91.

14. There is no doubt the applicant is not an employer engaged in construction and therefore would not be required by section 5(1) of O. Reg. 213/91 to complete a Form 1000. Section 5(2) does not state the constructor must ensure that only employers *engaged in construction* at the project provide the constructor with a Form 1000. The limiting words describing the kind of employers that must complete a Form 1000 found in section 5(1) are not in section 5(2). Therefore, according to the responding party, the obligation imposed on the constructor by section 5(2) is broader than the obligation under section 5(1).

15. The responding party reinforces its argument on the interpretation of OHSA by reference to the decision in *Ontario (Ministry of Labour)* v. *Enbridge Gas Distribution*, [2010] O.J. No. 1504, leave to appeal denied [2011] O.J. No. 24. Madam Justice Bellamy relied on *Ontario (Ministry of Labour)* v. *Hamilton (City)*, (2002), 58 O.R. (3d) 37 (CA) when she wrote at paragraphs 22 and 24:

> 22. In generously interpreting remedial legislation such as the *OHSA*, it is important to remember that the statute is to "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the [*OHSA*] according to its true intent, meaning and spirit"….
>
> 24. The OHSA strives to make every party, every employer, and every individual in the workplace responsible in some measure for health and safety. Accidents can and do happen. However, they do not always happen simply because of one incident. They can happen because of several incidents or omissions, as the appellants contend was the case here. The responsibilities under the Act overlap, creating a redundancy which operates to the advantage of workers.

That same approach to the interpretation of OHSA was discussed recently by the Court of Appeal in *Ontario (Ministry of Labour)* v. *United Independent Operators Limited*, (2011), 104 O.R. (3d) 1, in the which the Court wrote at paragraph 29:

> Because the OHSA is a remedial public welfare statute intended to guarantee a minimum level of protection for the health and safety of workers, it is to be interpreted generously, rather than narrowly. As this court directed in *Ontario (Ministry of Labour)* v. *Hamilton (City)* (2002), 58 O.R. (3d) 37, [2002] O.J. No. 283 (C.A.), at para. 16:
>
>> When interpreting [the OHSA], it is important to bear in mind certain guiding principles. Protective legislation designed to promote public health and safety is to be generously interpreted in a manner that is in keeping with the purposes and the objectives of the legislative scheme. Narrow or technical interpretations that would interfere with or frustrate the attainment of the legislature's public welfare objectives are to be avoided.

16. The responding party submits having the Form 1000 necessary so as to ensure the constructor knows the identity of every employer coming on to its project so it can determine who is responsible for the individuals who are on its project. It argues the purpose of the provision is to ensure there is a proper record of what employers have employees at the project to facilitate enforcement and compliance with OHSA.

17. We agree the Board must give OHSA a large and liberal interpretation consistent with the objectives of the Act and at the same time undertake a contextual analysis of the issue. We also accept the responding party's argument that the obligation imposed on a constructor under section 5(2) of O. Reg. 213/91 is broader than the obligation found in section 5(1).

18. It is clear to us if section 5(2) of O. Reg. 213/91 and an inspector's order require the responding party to ensure the applicant provides a Form 1000 when it is at the responding party's project, the responding party must comply with the regulation and the order. In that circumstance, it cannot be in violation of section 8.03 of the Residential Agreement when it denies access to a business representative of the applicant as a collective agreement provision cannot override the requirements of a regulation.

19. In this case however, a careful contextual reading of section 5 of O. Reg. 213/91 persuades us it was not meant to apply to the employer of employees who are at the job site, not

for the purpose of carrying out construction, undertaking repairs to equipment or supplying materials or equipment to the site but rather are there on behalf of their employer that is a third party not subject to the direction or control of the constructor for the purpose of conducting an inspection or investigation of the work being carried on at the site.

20. It seems to us the fundamental obligation of section 5 is directed at the constructor ensuring those employers coming on to its project to carry out construction work or to supply material or equipment to enable the project to continue for its benefit provide it with the requisite approved registration form in Form 1000. The employers at the job site at the behest of either the constructor or an employer engaged in construction work at the job site are the employers the constructor must ensure provide it with the approved Form 1000 registration form. The constructor has ultimate control over the selection and identity of those employers coming on to its site and can demand those employers file the requisite Form 1000 registration form before stepping foot onto its site. Employers that are not subject to the direction or control of the constructor and are authorized by law to access the site, such as the employers of municipal inspectors, police officers, firefighters, paramedics, and provincial inspectors or officers are not required to provide a Form 1000 before their officials can enter the site controlled by the constructor.

21. In our view, that same analysis is equally applicable to a trade union's business agents who have the right to access a construction site by virtue of a collective agreement. Employers attending at the site to carry out inspections or to "police" the site to ensure compliance with obligations imposed by law or through collective agreements are not attending at the site at the behest of the responding party. Rather, they are at the site to enforce obligations imposed on either the constructor or the employers engaged by the constructor.

22. The applicant, when it is policing the job site, is there to ensure compliance with and if necessary enforce its collective agreements. It is not engaged in construction work and therefore is not required by section 5(1) of O. Reg. 213/91 to provide a registration form. We are of the view that section 5(2) of O. Reg. 213/91, when read in context, having regard to the purpose of the section which is to ensure the responding party is aware of the identity of the employers of employees working at its project in order to ensure compliance with OHSA, does not apply to the applicant when it is seeking to enforce obligations under its collective agreements. The applicant is at the site for its own purposes. It is not there at the request of or for the benefit of the responding party.

23. Moreover, we note the responding party will already be aware of the applicant's presence at its site as the applicant's business representatives are required by section 8.03 of the Residential Agreement to notify the superintendent at the project about his or her visit to the site. In our view, there is nothing in the Form 1000 the responding party seeks from the applicant in respect of its presence at the site that it does not already have. In other words, the responding party must be notified when a business representative of the applicant attends at the site by reason of section 8.03 of the Residential Agreement. In the absence of a direct order from an inspector requiring the responding party to secure a Form 1000 from the applicant, we are satisfied there is nothing in either section 5 of the O. Reg. 213/91 or Mr. McIntaggart's order requiring the responding party to secure a Form 1000 from the applicant when the applicant's business representatives are at its site.

24. We observe that if Mr. McIntaggart had issued an order requiring the responding party to obtain a Form 1000 from the applicant and had notified the applicant about that order, the

applicant would have had the right to appeal that order under section 61 of OHSA. In this case, the applicant did not get notice of Mr. McIntaggart's order on which the responding party relies until well after the time for appealing that order had expired. Therefore, it could not challenge the responding party's interpretation of that order through the appeal mechanisms under OHSA.

25. In the result, we are satisfied that neither Mr. McIntaggart's order nor section 5(2) of O. Reg. 213/91 requires the responding party to ensure the applicant provides it with a Form 1000 registration in order for the applicant's business representative to attend at the responding party's project.

26. We therefore conclude the responding party contravened section 8.03 of the Residential Agreement when it barred the applicant's representatives from its project at Weston Road and Sheppard Ave in Toronto.

27. The grievance is therefore allowed.

28. The Board declares the applicant's business representatives are entitled under section 8.03 of the Residential Agreement to have access to the responding party's project at Weston Road and Sheppard Avenue without the applicant first providing a Form 1000 to the responding party.

3711-09-U Association of Management, Administrative and Professional Crown Employees of Ontario, Applicant v. **Crown in Right of Ontario (as represented by the Ministry of Government Services)**, Responding Party v. Ontario Public Service Employees Union, Intervenor

Duty to Bargain in Good Faith – Order for Productions – Unfair Labour Practice – AMAPCEO alleged that the Crown had violated s. 17 of the Act when it failed to disclose to AMAPCEO a "secret" agreement to compensate OPSEU bargaining unit members in addition to the amounts published in the parties' signed collective agreement – During the course of the hearing, a confidentiality order was made relating to documents produced – The Crown sought a further permanent confidentiality order with respect to two letters that spelled out the "confidential compensation agreement" and were marked as exhibits in the proceeding – The Crown and OPSEU both argued that the absence of a permanent confidentiality order for the two documents would cause significant labour relations harm – The Board weighed the request for confidentiality against the open court principle – Having already ruled that the allegations of fact, if proven, would constitute a case for some remedial relief, the Board saw no reason to restrict AMAPCEO's ability to refer to the documents publicly – Request denied; matter continues

BEFORE: *Diane L. Gee*, Alternate Chair.

APPEARANCES: *Michael Mitchell, Steven Barrett, Stephanie Hobbs, Gary Gannage, Bob Stambula* and *Anthony Schein* for the applicant; *Len Hatzis, David Brook* and *Felix Lau* for the responding party; *Donald K. Eady* and *Ruth Hamilton* for the intervenor.

DECISION OF THE BOARD; May 3, 2011

1. This is an unfair labour practice complaint filed by the Association of Management, Administrative and Professional Crown Employees of Ontario ("AMAPCEO") under section 96 of the *Labour Relations Act, 1995* (the "Act") alleging a breach of section 17 of the Act by the Crown in Right of Ontario (the "Employer"). By way of decision dated February 16, 2011, the Board ordered the Employer to produce documents as described therein to AMAPCEO and ordered that the documents so produced were to be kept confidential as between the parties. For ease of reference I refer herein to the Board's February 16, 2011 orders as the "production order" and the "confidentiality order".

2. Following the issuance of the Board's February 16, 2011 decision, the hearing commenced. A number of the documents produced by the Employer to AMAPCEO pursuant to the production order were entered into evidence and marked as exhibits. An issue then arose as to whether AMAPCEO should be required to maintain the confidentiality of two specific documents that had been produced by the employer *after* they had been marked as exhibits and entered into evidence in the Board's proceedings. The Employer asked the Board to order that the terms of the February 16, 2011 confidentiality order would continue to apply to two documents marked as Exhibits 18 and 19 notwithstanding that they had been entered into evidence. For the sake of clarity, the Employer does not take the position that the Board's February 16, 2011 confidentiality order in and of itself continues to apply to documents after they have been made exhibits. The Employer (quite properly) recognized that such was not the Board's intention when issuing the February 16, 2011 confidentiality order. Rather, the Employer seeks a new Board order extending the application of the February 16, 2011 confidentiality order to two specific documents that have been marked as Exhibits 18 and 19 in this matter. For ease of reference, I refer herein to the confidentiality order sought by the Employer with respect to Exhibits 18 and 19 as a "permanent confidentiality order".

3. Further, the Employer seeks an order from the Board that the Employer retains the right to request a permanent confidentiality order in respect of documents that may subsequently be made exhibits in this proceeding should it wish to do so.

4. Finally, the Employer requested that I issue my decision in writing and, should I decline to make a permanent confidentiality order in respect of Exhibits 18 and 19, that I impose a confidentiality order for a period of three days following the date of my decision in order to permit the Employer time to apply for a stay of my decision.

5. For the reasons that follow, I decline to impose a permanent confidentiality order on AMAPCEO in respect of Exhibits 18 and 19 and I decline to impose a confidentiality order on AMAPCEO for a period of three days in order to permit the Employer time to apply for a stay of my decision.

6. AMAPCEO did not oppose the Employer's request that the confidentiality to be attached to documents tendered into evidence in the future may be the subject of further submissions by the parties. There is no reason on the facts of this case that not to grant the request. Accordingly, the Employer's request that the confidentiality to be attached to documents that are tendered into evidence in the future may be the subject of further submissions by the parties is granted.

7. Before turning to the relevant facts and the submissions of the Employer and OPSEU in support of the request for a permanent confidentiality order, it is useful to set out what is and is not being sought. The Board is not being asked to hold an "in camera" hearing. The Board is not being asked to make what is commonly referred to as a "sealing order" (an order that prevents anyone including the press from gaining access to the documents). The Employer does not take the position that the confidentiality order made by the Board in its February 16, 2011 decision continues to apply after documents are made exhibits in the proceedings. Rather, the Employer is asking the Board to make a new order, one that would require AMAPCEO, and AMAPCEO alone, to keep Exhibits 18 and 19 confidential on a permanent basis notwithstanding that they have now been entered into evidence.

The Facts

8. As set out in my decision of February 16, 2011, AMAPCEO alleges that the Employer failed to bargain in good faith during negotiations for the current collective agreement by misleading AMAPCEO as to the terms of the collective agreement it had recently concluded with OPSEU and/or relying on the terms of the OPSEU collective agreement as posted on the OPSEU website without informing AMAPCEO that the Employer and OPSEU had entered into a confidential agreement, not reflected in the OPSEU collective agreement, that the across the board ("ATB") increases in the final year of the OPSEU agreement would be 1% higher than reflected in the OPSEU collective agreement (the "confidential compensation agreement").

9. At the commencement of the hearing, the Employer brought three motions seeking to have the Board exercise its discretion under section 96 of the Act to decline to enquire into the application. The Employer argued that the application ought to be dismissed on the basis that it was moot; on the basis of delay; and on the basis that the facts alleged in the application do not make out a case for the remedies requested. The Employer's motions were dismissed by the Board. What is noteworthy for the purposes of the instant decision is that the Board has already determined that, if the facts set out in the application are established, there is a case for some form of remedial relief.

10. After ruling on the Employer's three preliminary motions seeking to have the Board decline to enquire into the application, the Board considered AMAPCEO's request for a document production order. The Employer objected to the Board ordering the production of documents and argued, in the alternative, that if such an order were to be made, strict orders requiring AMAPCEO to maintain the confidentiality of the documents ought to be made. Although AMAPCEO initially opposed the Board making a confidentiality order, at the end of the day of hearing at which the Board had dealt with the Employer's three preliminary motions and had not had time to address the issue of document production, AMAPCEO indicated that, in order to move matters along and in light of the fact that its principle concern was to have a production order, it would not oppose some form of confidentiality order being made.

11. The parties provided the Board with written submissions on the issue as to whether the Employer should be ordered to produce documents to AMAPCEO. After considering those submissions, and for the reasons set out therein, the Board, in its decision of February 16, 2011 made the following orders and directions:

> 10. … I hereby direct the Employer to produce to counsel for AMAPCEO, no later than March 22, 2011, a copy of all documents of any nature

whatsoever relating to across the board increases in compensation for members of the OPSEU bargaining units with the Crown in Right of Ontario for the period commencing January 1, 2009 and following. For the sake of clarity only and without limiting the generality of the foregoing, the documents that the Employer is required to produce include e-mails, correspondence, memorandums, reports, analysis, and notes, including internal Crown documents and documents between OPSEU and the Crown, as well as all letters, letters of intent, agreements, Memorandums of Settlement or Understandings.

11. All documents produced are subject to the following directions:

(a) The parties to the proceedings are directed:

i) to comply with the following directions;

ii) to direct their agents, officers, employees and counsel comply with the following directions; and

iii) to obtain the agreement of any third party to whom they might properly give any of the documents that such third party shall comply with the following directions.

(b) With respect to the use of documents produced all parties are directed to follow these requirements:

i) all documents are to be kept confidential as among the parties;

ii) no copies are to be made of any document except for the purpose of the hearing of this application;

iii) no copies are to be circulated to third parties, except as necessary for the conduct of the litigation of this application, and once that purpose has been completed the copies are to be retrieved from the third parties;

iv) the documents are to be used for the purposes of this hearing only and for no other or improper purpose; and

v) all copies of all documents are to be returned to the provider of the documents at the conclusion of this application and any judicial review proceedings arising out of this application, save for one copy to be retained by each counsel in their file.

12. Following the Employer's production of documents pursuant to the Board's order, the hearing recommenced. At that time, AMAPCEO raised three issues concerning the productions made. First, AMAPCEO was concerned about redactions that had been made to the documents. This issue was resolved by the documents being provided to me and my reviewing the material that had been redacted to ensure that it did not fall within the scope of the Board's production

order. Secondly, the Employer had not produced documents that it argued were covered by public immunity privilege. The Board will be hearing the parties' submissions on this issue on May 5, 2011.

13. Finally, the Employer produced the two documents with respect to which the Employer seeks a permanent confidentiality order. It is impossible to set out the facts as to what followed the Employer's production of these documents and give written reasons for the Board's ruling herein (as has been requested by the Employer) without referring to some aspects of the two documents.

14. On their face, the two documents are highly probative of the facts that AMAPCEO asserts in this proceeding. Both documents are a very short one page letter on Ministry of Government Services letterhead signed by David Logan, the Assistant Deputy Minister, Employee Relations Division. They are both addressed to Brian Gould, the OPSEU Chief Negotiator. As a result of the production of these two documents, AMAPCEO requested a Board order that the Employer produce its computer records showing who created the documents and when. When I enquired as to whether it was not obvious on the face of the documents as to who created the documents and when, the Employer advised that it would put AMAPCEO to the strict proof of the documents in order to enter them into evidence. In light of the Employer's position, AMAPCEO reiterated its need for production of the Employer's computer records that would establish when the documents were created and by whom.

15. The issue was ultimately resolved when the Employer agreed there was a confidential agreement between the Employer and OPSEU. The Employer agreed that the document that was later marked as Exhibit 18 "speaks for itself" and "can go in for what it says". The Employer further agreed that this document was signed by Mr. Logan on December 24, 2008 and that it, along with the document that was later marked as Exhibit 19, was given to Mr. Gould by Bob Bass, the Employer's Chief Negotiator, on December 23, 2008 during conciliation. AMAPCEO thus withdrew its request for an order requiring the Employer to produce its computer records showing when the two documents were created and by whom.

16. Following the exchange described above, the hearing on the merits of the application began. Opening statements were given and AMAPCEO called Gary Gannage, its President, as its first witness. The examination-in-chief of Mr. Gannage commenced, but was not completed, on this day. On the next day of hearing, there was a dispute between the parties as to what the Employer had agreed to the previous day. I referred to my notes and advised the parties the Employer had made the agreements as described in the foregoing paragraph. At this stage, counsel for AMAPCEO requested that the two documents that were the subject of the Employer's agreements be marked as Exhibits. They were marked as Exhibits 18 and 19 with no objection being made by the Employer. AMAPCEO then sought confirmation from the Board that the Board's confidentiality order ceased to apply once documents were entered into evidence in the proceedings. It was at this stage that the Employer asked that the Board make a permanent confidentiality order and permit the Employer to reserve the right to make similar requests in respect of documents that may subsequently be marked as exhibits in these proceedings.

17. At the request of the Employer, the Board scheduled April 28, 2011 for the sole purpose of hearing the parties' submissions in respect of the Employer's request. On April 28, 2011, OPSEU was in attendance and sought to intervene for the sole purpose of making submissions to the Board on the issue of whether the Board ought to issue a permanent

confidentiality order in respect of Exhibits 18 and 19. The Board, over the objections of AMAPCEO, granted OPSEU the right to intervene for this limited purpose.

Submissions of the Employer and OPSEU

18. The Employer and OPSEU submit that section 110 (16) of the Act gives the Board the power to impose restrictions on the disclosure or use of evidence. By way of example, the Employer relies upon *Ontario Hydro Services Co.* [2002] O.L.R.D. No. 4419 in which the Board imposed a confidentiality order that was stated to apply to "… all evidence and documents whether they become exhibits or not." The Employer argues that the Board did not struggle with the decision to impose a permanent confidentiality order in *Ontario Hydro Services Co.* and the decision stands for the proposition that the Board is prepared, in the appropriate circumstances, to make such an order.

19. The Employer further relies on the decision of *Maxi*, [1998] OLRB Rep. May/June 448 wherein the Board dealt with a dispute between the parties over whether a voluntary recognition agreement could be disclosed to others if and when it was admitted into evidence. Two of the parties sought to restrict the use of the voluntary recognition agreement to the proceedings before the Board and to ensure that it was not copied, excerpted or otherwise disclosed to persons outside the hearing. One of the parties took the position that the voluntary recognition agreement became a public document once it had been relied upon in the proceedings and that its contents could thereafter be disclosed to anyone by anyone. The decision begins with an overview of the common law rule that there is an implied undertaking on a party who obtains document production from another party in the course of litigation not to use the document for a purpose other than that of the proceeding in which the document was produced. Reference is made to the Board's decision in *Shaw-Almex Industries Limited*, [1984] OLRB Rep. April 659 wherein it was determined that such an undertaking ought to be implied where documents are produced in the course of Board proceedings.

20. The Board then, at paragraph 12 of the decision, turns to the question of what restriction, if any, there is on the use of documents admitted into evidence. In this regard, the Board concludes as follows:

> 12 … The purpose of the implied undertaking is to protect the private documents of one party, to which another party would have no access but for a legal proceeding, by restricting their use to the proceeding in which they are produced. This protection is particularly important where the relevance and admissibility of documents has not yet been established, and it serves to encourage generous production of all documents which are arguably relevant to the proceedings.
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> 13. Once a document has been admitted into evidence, however, it is no longer confidential in the same sense and its contents may be disclosed to all persons present at the hearing, and reported by them to others. In these circumstances it can no longer be said that the party to whom production was made could not obtain access to the document by any means other than by way of that production, and it makes little sense to impose an arbitrary limit on the use of the document by the litigant and counsel which does not apply to others attending the hearing or reading or hearing reports.

21. The Board in *Maxi* concludes that the implied undertaking does not limit the use to which a document may be put once it has been introduced into evidence in the course of Board proceedings.

22. Commencing at paragraph 16 of the *Maxi* decision, the Board considers whether there is any other basis on which the Board can and should restrict the use to which the voluntary recognition agreement can be put outside of the Board proceedings. At paragraph 19, the Board notes that it has a general power pursuant to what is now section 110 (16) of the Act to establish its own practice and procedure and that such power might well lead the Board, in an appropriate case, to impose restrictions on the disclosure of evidence and/or documents, or to limit the use of such material outside proceedings before the Board. The Board commented that the Board has and will edit sensitive documents which disclose personal information to third parties which is not required for the adjudication of the issues in a particular matter. The Board went on to state "one can also imagine that in an appropriate case the Board may restrict the use to which the parties could put certain evidence in a particular case because of concern that labour relations harm would otherwise result." As to whether such an order was appropriate in the case before it, the Board concluded as follows:

> 20. In the present case, however, no compelling reason for the imposition of such a restriction has been offered, other than the desire of the intervenor and responding party to shelter the details of the arrangements between them from scrutiny. The main concern of the UFCW, as described by their counsel, is that excerpts from the [voluntary recognition agreement] will be taken out of context and publicized by the USWA in a way which is prejudicial and misleading. Frankly, the best way to ensure that this does not occur is not to impose conditions of secrecy on the document, but rather to deal with it openly and fairly in the course of the hearing, and in the Board's decision, in order that an objective characterization of its significance may be reported and discussed. Counsel for the UFCW argued that restricting the document outside the hearing would have no impact on the holding of a fair hearing by the Board, as the Board could ensure that all parties were able to rely upon whatever portions of the document were found to be relevant, and would be able to review the whole document for its deliberations. However, holding a fair hearing is not just about the conduct of the hearing, but also about the appearance of fairness. Where the parties intend to rely to a significant degree upon a particular document, and the Board will need to interpret it in order to reach and to explain its conclusions, an atmosphere of secrecy around its contents is inconsistent with the goal of transparent decision-making and will not encourage support for the Board's processes.
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> 21. In the circumstances of this case I see no reason to make any particular order limiting the extent to which any documents admitted into evidence can be disclosed, or the use to which it can be put, and the motion of the intervenor is therefore denied.

23. In the course of argument, the Employer stated that it does not dispute the common law rule concerning the application of the implied undertaking as expressed in *Maxi* or that implied undertaking no longer applies once a document has been entered into evidence in the course of a Board proceeding. The Employer relies on *Maxi* in support of the proposition that, even if the implied undertaking no longer applies, the Board has the jurisdiction to attach a further confidentiality order. The Employer further relies on *Maxi* in support of the proposition

that the Board may restrict the use to which the parties can put certain evidence in a particular case out of a concern that "labour relations harm" would otherwise result.

24. The Employer argues that Exhibits 18 and 19 represent a confidential agreement between OPSEU and the Employer that the parties have never taken steps to publish. The Employer argues that the confidentiality that the Employer and OPSEU felt was due from a labour relations perspective would be destroyed if the order sought is not granted. It is argued that, if the Employer is vindicated, absent a permanent confidentiality order, the Employer and OPSEU will have irretrievably lost the confidentiality of their agreement. The Employer points out that the confidential agreement is between the Employer and an entity that is not a party to these proceedings.

25. In the submission of the Employer, its position that it is appropriate to impose a permanent confidentiality order in order to avoid labour relations harm is supported by the fact that, following review of the Employer's submissions of August 10, 2010 in which labour relations harm was advanced as a reason for imposing a confidentiality order and AMAPCEO's submissions of August 18, 2010 in which it asserted that no labour relations harm was associated with releasing the documents, the Board imposed a confidentiality order in its February 16, 2011 decision. The Employer refers to the following portions of its August 10, 2010 submissions:

> There would be significant detrimental impact on labour relations if the Employer and its bargaining agents were required to disclose all confidential agreements or undertakings or discussions to other bargaining agents. Confidential agreements are of paramount significance in labour relations and have proven to be a highly productive means by which to resolve difficult issues. Consequently, the removal of this avenue of resolution would severely diminish the ability of the parties to work productively and would hamstring effective labour relations in the future. More specifically, if any such agreement were to be ordered to be disclosed, there would be a chilling effect on the ability and willingness of bargaining parties to enter into confidential agreements.
>
> The OLRB has repeatedly stated that the proper disposition of disputes arising under the Labour Relations Act is but one purpose of the Act. An equally important purpose of the Act is the furtherance of collective bargaining between parties. The OLRB should ensure that the terms of agreements, including any confidentiality terms, could be honoured by the parties without undue meddling and interference by other bargaining agents. In this case, the balancing test under the fourth Wigmore condition also favours non-production because an alleged confidential agreement, in itself, would not establish the Employer had engaged in bad faith or deception from the outset, as had been alleged by AMAPCEO. Therefore, the production of an alleged confidential agreement would be of limited assistance to the Board, and it would not resolve the issue in dispute and/or AMAPCEO's application.
>
> The same considerations apply to item (ii) of the disclosure request. To the extent that they relate to an alleged confidential agreement, the requested documents were prepared through confidential negotiations with another party with the intent the discussions and any agreements arrived up between the parties would remain confidential. It would be inimical to the purposes of the Act if AMAPCEO were allowed to access an alleged confidential agreement indirectly but had no right to access an alleged confidential

> agreement directly. Again, the documents in question would not resolve the issue in dispute and/or AMAPCEO's application.

26. When the Board advised the Employer that the confidentiality order was included in the February 16, 2011 decision in the absence of any reasons being given therefore because the Board had understood AMAPCEO to have waived its objection to the Employer's request that such an order be made, the Employer responded that, while such may mean that the Board has not previously determined that a confidentiality order was required in order to avoid causing labour relations harm, the fact that AMAPCEO waived its objection to the Board making a confidentiality order meant that AMAPCEO accepted that the disclosure of the documents would result in labour relations harm. The Employer argued that, regardless of whether the Board determined that a confidentiality order was appropriate or AMAPCEO agreed to the imposition of such an order, some recognition has to be given to the fact that a confidentiality order was previously made.

27. I pause here in my recitation of the Employer's submissions as I do not think that the submission set out above has any merit. The Board did not impose a confidentiality order in its decision of February 16, 2011 based on an assessment of labour relations harm. Further, AMAPCEO strongly objected to the Employer's assertion that labour relations harm would result unless a confidentiality order was imposed and I understood AMAPCEO's withdrawal of its objection to the Board making a confidentiality order to be an effort on its part to advance the proceedings and not a concession that the order was warranted.

28. Returning to the Employer's submissions, the Employer states that the confidential agreement provides for a special wage adjustment for only the unified OPSEU members. The Employer did not know if the corrections OPSEU members were aware of the special wage adjustment. The Employer indicated that such could have an impact on OPSEU.

29. The Employer argues that the Board needs to weigh the labour relations harm that would occur if the permanent confidentiality order is not imposed against the fact that granting the order would not impact on AMAPCEO's ability to conduct its case. The Employer suggests that the fact that AMAPCEO can call its case effectively even if a permanent confidentiality order were to be imposed means that AMAPCEO must intend to use the documents for purposes that are not associated with the hearing. The Employer queries whether AMAPCEO intends to use the documents for "political purposes".

30. Responding to the submissions made by AMAPCEO, the Employer submits that the hearing has barely begun. The Board has heard partial evidence from one AMAPCEO witness and has not yet heard from any witness called by the Employer. In the submission of the Employer, "it is way too premature to be making findings to ground an interim ruling at this stage" and "if the Board finds that the confidential agreement does not violate the Act, all this falls away."

31. The Employer argues that the case of *Tricin Electric Ltd.*, [2004] OLRB Rep. November/December 1224 supports the imposition of a permanent confidentiality order even where it is anticipated that the document will be referred to in an open hearing. The Employer relies on *Tricin Electric Ltd.* to support its position that there is a purpose to be served in having a confidentiality order imposed on documents entered into evidence.

32. Finally, the Employer provided the Board with *Modine Manufacturing Co. v. Rose Corp.*, [2006] O.J. No. 5095 dealing with the issue of settlement privilege. The Board was directed to the following quote from *The Law of Evidence in Canada* set out at page 7, paragraph 24 of the decision:

> However, the better view is that the privilege applies not only to failed negotiations, but also to the content of successful negotiations, so long as the existence or interpretation of the agreement itself is not in issue in the subsequent proceedings and none of the exceptions are applicable. The rationale behind the privilege supports this position. If the parties to settlement negotiations believed that their statements may be used by a third party in subsequent proceedings, whether or not they reached agreement, they might be less frank in those discussions.

The Employer argues that OPSEU and the Employer treated the documents as confidential and, if the documents are produced, it could result in less frank settlement discussions in the future.

33. OPSEU advises the Board that it supports the submissions made by the Employer. OPSEU submits that the Board has jurisdiction pursuant to section 110(16) of the Act to make a permanent confidentiality order and that such an order has been made by the Board in the past. OPSEU argues that the Board has to engage in a balancing between the importance of the open court process and other values that are engaged. Relying on *Maxi, supra*, OPSEU argues that "labour relations reasons" must be considered. OPSEU argues that it and the Employer have their own labour relations reasons for wanting to keep the documents confidential. OPSEU submits that AMAPCEO is not the press and cannot assert any higher purpose for its opposition to the imposition of a permanent confidentiality order. OPSEU states that AMAPCEO is "seeking to use the documents for its own labour relations purposes."

34. OPSEU advances three bases upon which it asserts labour relations would be harmed if a permanent confidentiality order binding AMAPCEO is not granted. First, OPSEU argues that side agreements, letters of agreement and confidential agreements are a normal part of the collective bargaining process. In recognition of this, OPSEU argues that there must be a zone of confidentiality that may never make it into the public realm. OPSEU submits there is no labour relations purpose to airing these documents. Second, OPSEU states the documents have been treated as confidential between the parties and that is the basis upon which the document was delivered. If the documents are to make it into the public realm, OPSEU has much to say about how the documents are to be made public. OPSEU owes a duty of fair representation to its members and ought to be able to determine if and when the documents are made public. OPSEU argues that AMAPCEO has asserted no counterbalancing labour relations reason in opposition to the order requested. Thirdly, OPSEU asserts that the Board routinely accepts redacted documents to ensure that an individual's personal information does not make it into the public realm; there is no reason why the same courtesy ought not to be extended here. AMAPCEO will not be inhibited in its ability to present its case by a permanent confidentiality order. When balancing the relative labour relations interests, OPSEU argues a permanent confidentiality order ought to be imposed.

35. At the conclusion of the submissions by OPSEU and the Employer, the Board enquired of their counsel as to what purpose a permanent confidentiality order would serve given that the hearing was an open hearing. It is highly likely that the contents of Exhibits 18 and 19 will be referred to in the hearing and heard by those in attendance. The documents are not long.

They could be read aloud in a matter of minutes. It is highly likely that they will be. If the Board were to grant the order requested, only AMAPCEO would be prevented from making the documents public; any one else who sits and listens while the contents of the letters are read out would be free to do so. The Employer and OPSEU advised the Board that they believe a permanent confidentiality order that binds AMAPCEO will serve to mitigate the risk of the actual documents, as opposed to the contents thereof, being publicized. AMAPCEO has a copy of the actual letters whereas someone sitting in the hearing room would only acquire knowledge of the contents of the letters. No explanation was given as to why the distribution of the actual letters was more problematic than the distribution of a document replicating the entire contents of the letters.

36. Given that I have ruled in favour of AMAPCEO, I have not summarized the submissions made on its behalf herein.

Decision

37. For the reasons that follow, the request that the Board impose a permanent confidentiality order on AMAPCEO in respect of Exhibits 18 and 19 is denied. I further decline to impose a confidentiality order for a period of three days in order to permit the Employer to apply for a stay of my decision.

38. I begin from the proposition that, according to the common law, documents produced in the course of litigation are subject to an implied undertaking that the confidentiality of the documents will be maintained. This undertaking prevents a party to whom documents have been produced from revealing either the document or its contents. This implied undertaking serves to encourage production and protect the confidentiality of information that never makes its way into evidence in a legal proceeding. However, once a document is entered into evidence, it is no longer covered by the implied undertaking and its contents can be disclosed to all persons present at the hearing and reported by them to others. The implied undertaking no longer applies as the document and its contents are now in the public domain and it makes little sense to restrict the use to which a litigant and its counsel can put the document or its contents but not anyone else attending the hearing or reading the Board's decisions (see *Maxi, supra*, paragraph 13). Further, open and transparent proceedings are a cornerstone of our justice system. Sealing evidence heard and considered in a legal proceeding is antithetical to openness and transparency.

39. The Board has the jurisdiction pursuant to section 110(16) of the Act to determine its own practice and procedure. The Board thus has the jurisdiction to issue a confidentiality order that extends to documents entered into evidence.

40. Imposing a confidentiality order on AMAPCEO in respect of documents entered as exhibits would be a qualification, albeit modest, on the open court principle which has been described by the Supreme Court of Canada in *Vancouver Sun (Re)*, [2004] 2 S.C.R. 332 at paragraph 23 as a "hallmark of a democratic society". One of the underlying values of the open court principle is the need to ensure that justice is carried out in a non-arbitrary manner (see: *Named Person v. The Vancouver Sun*, [2007] 3 S.C.R. 253 at paragraphs 31 and 32). A fully open proceeding is considered to result in more independent and impartial adjudication. Publicity of proceedings is one way in which our society can see that justice is in fact carried out and is an effective guard against impropriety. While the order sought by the Employer in this case does not

restrict observers of the hearing from publicizing the information contained in the documents, it restricts the very party who may have the greatest interest in ensuring that justice has been administered in a non-arbitrary manner from publicly referring to the document. Thus, while the extent to which the requested order impedes the open court principle may be modest, it is an impediment that ought to be avoided unless counterbalancing factors suggest otherwise.

41. The Employer argues that it is premature to "make findings to ground an interim ruling at this stage". In the submission of the Employer, "if the Board finds that the confidential agreement does not violate the Act, all this falls away." Assuming the Employer to be suggesting that the confidentiality of the documents should be maintained until the Board determines whether or not there has been a violation of the Act, I do not agree. The application makes out a *prima facie* case of a violation of the Act. The Board has ruled that, if the facts are proven, there is a case for some form of remedial relief. The documents in question go directly to the facts that AMAPCEO needs to prove. They are highly probative. The open court principle does not allow for proceedings to be cloistered unless the application succeeds. Applicants are as entitled as responding parties to the operation of the open court principle and the enhanced likelihood of the provision of a fair and impartial process that such principle provides. Further, and in any event, imposing a permanent confidentiality order on AMAPCEO alone will not result in the documents remaining confidential. It is highly likely that the documents will be very shortly referred to in an open hearing and their brief contents read out. Anyone sitting in the hearing room (other than those present on behalf of AMAPCEO if the order is made) will be free to publicize the contents of the letters. It is equally highly likely that the contents of the documents will have to be referred to by the Board in its final decision.

42. The Employer relies on the case of *Tricin Electric Ltd.* in support of its position that a confidentiality order is appropriate even though the document will be referred to in an open hearing. This case bears no similarity to the facts of *Tricin Electric Ltd.* wherein the documents contained personal and private information belonging solely to a third party that was irrelevant to the issues in dispute and would not be referred to in the open hearing or make its way into the Board's decision. This matter involves documents created by and belonging to the responding party that are directly on point and contain no extraneous information. The entire contents of the documents will be referred to in the hearing and will most likely have to be referred to by the Board in its final decision.

43. The Employer and OPSEU also assert that labour relations harm will result in the absence of a permanent confidentiality order that applies to AMAPCEO. First it is asserted confidential agreements are routinely entered into in the course of collective bargaining and are instrumental to the parties' ability to achieve a settlement. If the agreement at issue herein is not kept confidential by AMAPCEO, it is asserted that there will be a chilling effect on the use of confidential agreements to settle collective bargaining disputes in the future.

44. I was provided with no reason as to why a chilling effect would arise as a result of AMAPCEO publicizing the information in the documents as opposed to anyone else who may hear the contents of the documents in the open hearing. I do not accept that allowing AMAPCEO, as opposed to anyone else, to publicize the documents will have a chilling effect on the use of confidential agreements to settle collective bargaining disputes. Further it must be borne in mind that the application resulting in the production of the documents establishes a *prima facie* breach of section 17 of the Act that is based in large part on the agreement reached by way of these very documents. Presumably, such would not be the case with the vast majority of confidential agreements reached in the course of collective bargaining.

45. Secondly, the Employer and OPSEU assert that labour relations harm will occur unless AMAPCEO is permanently restricted from disclosing the documents as revealing the documents may have an impact on OPSEU and its relations with its members. No details of the harm that would potentially result were given. Again, I was provided with no reason as to why OPSEU's relations with its members would be harmed if AMAPCEO were the party to publicize the information as opposed to the information being publicized by anyone else who may hear the contents of the documents in the open hearing. I do not accept that allowing AMAPCEO to publicize the documents, as opposed to allowing anyone else present at the hearing to publicize the information contained in the documents, would harm OPSEU's relations with its members. Further, and in any event, no details of the harm that would result were provided.

46. Thirdly, it is asserted that, if the documents are to make it into the public realm, OPSEU has much to be said about how the documents are to be made public. OPSEU owes a duty of fair representation to its members and ought to be able to determine if and when the documents are made public. Again, I was given no explanation as to why this same issue does not arise in respect of the information in the documents being distributed by someone other than AMAPCEO. Given that the information contained in the documents will likely be available to the public as a result of the documents being read in an open Board proceeding, OPSEU will, regardless of whether a permanent confidentiality order is imposed as against AMAPCEO, have to address its members as to what the documents say at a time not of its own choosing. The imposition of a permanent confidentiality order vis-à-vis AMAPCEO will not change that.

47. The Employer and OPSEU also argue that imposing the order would not impede AMAPCEO's ability to present its case and AMAPCEO must intend to use the documents for "political purposes". OPSEU argues AMAPCEO has asserted no counterbalancing labour relations reason in opposition to the order requested. I do not accept that it is appropriate to impose an order that impedes the open court principle where the order is not required to address some other counterbalancing value. In this case, for the reasons set out above, I do not see any counterbalancing value that would be protected by the order sought and, as such, would not impose an order that impedes the open court principle on the premise that the order would not impede the party's ability to present its case. Such an order would impede AMAPCEO's right to the full protections offered by the open court principle to a fair, impartial and independent hearing.

48. For the foregoing reasons, I decline to order that the terms of the Board's February 16, 2011 order continue to apply to the documents entered into evidence in this proceeding and marked as Exhibits 18 and 19.

49. I turn then to the Employer's request that I issue an order that the terms of the Board's February 16, 2011 order will continue to apply to the documents entered into evidence in this proceeding and marked as Exhibits 18 and 19 for a period of three days following the date of this decision. The reason given by the Employer for this request was it does not want the documents to be revealed by AMAPCEO before the Employer had a chance to apply for a stay of the Board's order. The order sought by the Employer is unusual. I was given no precedent for such an order having previously been made in a Board or Court proceeding. The hearing of this matter is scheduled to continue on May 4, 2011. It is very likely that the contents of Exhibits 18 and 19 will very be referred to in open hearing at that time. Once that has occurred, the contents of the documents can be revealed by observers present in the room. Imposing an order as against

AMAPCEO will not prevent this from happening. Thus, I see no purpose to be served in making the order even for the limited period of three days.

Summary of Determinations

50. The Employer's request that the confidentiality to be attached to documents that are tendered into evidence in the future may be the subject of further submissions by the parties is granted.

51. The Employer's request that the terms of the Board's February 16, 2011 order continue to apply to the documents entered into evidence in this proceeding and marked as Exhibits 18 and 19 is denied.

52. The Employer's request that I issue an order that the terms of the Board's February 16, 2011 order will continue to apply to the documents entered into evidence in this proceeding and marked as Exhibits 18 and 19 for a period of three days following the date of this decision is denied.

0816-09-R; 0819-09-U United Brotherhood of Carpenters and Joiners of America, Local 1669, Applicant v. **Finn Way General Contractors Inc.**, Responding Party; United Brotherhood of Carpenters and Joiners of America, Local 1669, Applicant v. Finn Way General Contractors Inc., David Karimi, Jeff Bedard, Pat Ouelette and Frank Bisignano, Responding Parties

Certification Where Act Contravened – Intimidation and Coercion – The union alleged that the responding employer and named individuals violated sections 70, 72, and 76 of the Act – The union requested relief under section 11 of the Act – The union asserted that the employer fired eight employees after the employer learned that the union was obtaining signed membership cards – The employer denied that it had violated the Act and claimed that the layoffs were due to a shortage of work – The Board found that the employer violated the Act when it laid off the employees for exercising protected rights under the Act and it hindered the employees' right to select or be represented by a trade union – The Board ordered the certification of the union under section 11 of the Act, as no other remedy would sufficiently counter the effects of the violation – The Board added that it would remain seized to determine any compensation to employees and ordered the employer to post copies of the decision and a Notice to Employees about the decision in the workplace

BEFORE: *Marilyn Silverman*, Vice-Chair.

APPEARANCES: *Craig Morrison* and *Wayne Sohlman* appeared on behalf of the applicant; *Shelley Trewin, David Karimi, Frank Bisignano, Pat Ouelette* and *Jeff Bedard* appeared on behalf of the responding parties.

DECISION OF THE BOARD: May 19, 2011

1. Board File No. 0816-09-R is an application for certification filed under the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended

(the "Act"). Board File No. 0819-09-U is an application under section 96 of the Act, involving the same parties in which the applicant, United Brotherhood of Carpenters and Joiners of America, Local 1669 (the "Carpenters" or the "union") alleges that the responding employer and the named individuals have violated sections 70, 72 and 76 of the Act during the course of the applicant's organizing campaign. The applicant relies on these same allegations of employer misconduct in its request for relief under section 11 of the Act. The certification application was filed on June 15, 2009; the unfair labour practice on June 16, 2009.

2. The employer denies any violations of the Act and asserts that the union is attempting to obtain certification under section 11 because it was unable to acquire sufficient employee support through its organizing efforts. It specifically denies any misconduct.

3. The applicant's position is that the responding party, Finn Way General Contractors Inc. ("Finn Way" or the "company" or the "employer"), laid off eight individuals upon learning that the union was obtaining signed membership cards. The union contends that the layoffs were designed to undermine the union's organizing efforts. The employer says that the layoffs were due to a shortage of work.

4. In the course of this case I heard evidence from eleven witnesses with the case concluding on January 18, 2011.

Background Facts

5. Finn Way is a general contractor operating in the Thunder Bay area. It is owned and operated by its President, Mr. David Karimi. Among other duties, Mr. Karimi negotiates final contracts with subcontractors.

6. Reporting to Mr. Karimi is Frank Bisignano. He is the project/general manager of the company and does estimating. Mr. Bisignano decides on the manpower requirements on all sites, including hiring and firing decisions.

7. In April 2008, the company commenced a project at the Sister Mary Smith Centre ("SMSC" or the "project" or the "site"). This project involved the construction of an addiction centre as part of the St. Joseph's Care Group. Finn Way was responsible for the foundation, insulation, framing, acoustical ceiling and insulation. There were two other projects ongoing by Finn Way at the time although neither had carpenters at work at the time relevant to these applications.

8. Dave Start was assigned as site supervisor on the SMSC job. Mr. Start reported to Mr. Bisignano. There were many subcontractors on this job and Mr. Start was responsible to supervise their work. The work of the direct Finn Way employees was supervised by Jeff Bernard, the working foreman on site, who reported to Mr. Start. Mr. Bernard has been with Finn Way for 13 years.

9. At the times relevant to these applications, Mr. Start was off work. In his absence, Mr. Bernard supervised the SMSC job.

10. The events upon which the union relies leading up to and following the layoffs took place over a very short period of time. Wayne Sohlman, the local union organizer, gave evidence and identified notes he took in connection with this matter, referred to as his organizing contact sheets. Mr. Sohlman's recollections in evidence are largely from his notes. The union also called three of the laid off employees: David Morriseau, Mathew Lovis and Damien Valdock.

11. The employer's evidence on the material points is from Messrs. Karimi, Bisignano, Bernard and Ouelette. Pat Ouelette is a working foreman who was also involved in the events relevant to this certification application.

Events occurring before Thursday, May 28, 2009

12. At the relevant time, the Finn Way employees were responsible for foundation, installation, wood strapping, acoustical ceiling and installation. The men on the SMSC job site in the month of May 2009 were Janusz Luszczynski, a labourer, Melon Paul, a forklift driver, Miles Burgess, who was installing access doors, Damien Valdock who was subcontracted out to the taping subcontractor, Perez Drywall, as they needed additional help, Matt Hill, a taper, Matt Lovis, who was doing siding with the siding contractor, J.L. Siding on the interior courtyard, Dave Morriseau, Keski Puukila, Kyle Munshaw and Tom Scott installing acoustical ceiling, and Mr. Ouelette, who was performing various jobs. Not all these men were working on the date of layoff.

13. Perez Drywall ("Perez"), a drywall subcontractor from Toronto, had been retained to do drywall and taping for the project at a square footage price. Perez was falling behind and so Mr. Bisignano assigned Messrs. Valdock and Hill to assist Perez with taping. The Finn Way employees who helped Perez with the job were paid by Finn Way, who in turn charged back Perez for that labour.

14. J.L. Siding was retained to install siding at the facility. When siding on two interior courtyards needed to be done quickly, Mr. Bisignano assigned direct Finn Way employees to do that work as well. Although this was not cost effective, Mr. Bisignano did not have another option. Under this arrangement, J.L. Siding did not get paid for those areas of siding that were done by the Finn Way employees.

15. There is no dispute that the Carpenters have been trying to organize the employees of Finn Way for a long time. Mr. Karimi recalls the union attending at Finn Way job sites in Thunder Bay for 14 or 15 years. Mr. Sohlman's notes show that he began trying to organize the employees of Finn Way in the spring of 2005. Up to the events leading up to these applications, the union has not been in a position to apply for certification.

16. In April/May 2009, the union engaged in more active organizing of the Finn Way employees. Mr. Sohlman made site visits to the SMSC job site and talked to workers.

17. Mr. Sohlman's notes indicate that on May 26, 2009 he had a long talk with Mr. Ouelette about joining the union. Mr. Sohlman knew Mr. Ouelette for a long time and recalls mentioning to Mr. Ouelette that the union was getting closer to being successful.

The events of Thursday, May 28, 2009

18. On May 28, 2009, Mr. Sohlman attended at the SMSC job site. He obtained three signed membership cards that day.

19. Later that day, Mr. Karimi visited the SMSC job site. There is a divergence of evidence as to who Mr. Karimi spoke to and what he said about the union and/or the cards.

20. Mr. Karimi said he spoke only to Mr. Paul. Mr. Karimi said Mr. Paul approached him. Mr. Paul said that someone told him to sign something because he was told he was a carpenter, but he was not a carpenter. Mr. Karimi responded that he could do nothing about that and told Mr. Paul that he did what he had to do.

21. Mr. Karimi said he did not recall speaking to anyone other than Mr. Paul on the site that day. He said there was no meeting called but agreed that other workers on site could have overheard his conversation with Mr. Paul. Mr. Karimi denies that either Mr. Bernard or Mr. Ouelette reported back to him any information about the union. Mr. Karimi testified in cross-examination and examination in chief that he did not speak to Mr. Bisignano about his conversation with Mr. Paul. However, in re-examination, Mr. Karimi said he did mention his conversation with Mr. Paul to Mr. Bisignano and that, although Mr. Karimi was not sure, he might have done that on the same day that the conversation occurred.

22. Mr. Karimi also recalled speaking to Mr. Bernard on May 28, 2009, but they did not speak about the union. Mr. Karimi did not relay the conversation he had with Mr. Paul to Mr. Bernard.

23. Mr. Bernard said that Mr. Paul told him himself that he was fooled into signing a union card. Mr. Bernard testified he did not mention this to either of Messrs. Karimi or Bisignano.

24. Mr. Morriseau, one of the laid off employees, recalled Mr. Karimi's May 28, 2009 visit differently. He said Mr. Karimi was there at either the lunch or the last coffee break. Mr. Morriseau then described a "little meeting" of 10-15 minutes outside the trailer. Mr. Morriseau recalls those in attendance as Messrs Lovis, Bernard, Paul and Burgess. Mr. Morriseau's recollection is that Mr. Karimi talked about the union saying they should do it on their own time and not bring them down.

25. Mr. Lovis recalled Mr. Karimi came to talk to him and some other men on the site around the coffee break on May 28, 2009. In addition to the men that Mr. Morriseau said were at the meeting, Mr. Lovis also recalled Mr. Scott being there. Mr. Lovis' recollections were that Mr. Karimi talked about being loyal and advised that he knew some people had signed cards. He indicating that he wished that they would not do it to him and his company. Mr. Lovis also recollects that he said it was fine to sign cards but they should do it on their own time.

26. Mr. Ouelette said he did not attend a meeting with Mr. Karimi on May 28, 2009 and did not recall seeing Mr. Karimi on site that day.

27. Mr. Valdock said that on Thursday or Friday (May 28 or May 29, 2009), Mr. Ouelette asked him if he had signed a union card and Mr. Valdock said he had.

28. Mr. Bernard said that he saw Mr. Sohlman on May 28, 2009 and had some discussions with him about whether he was parked on Finn Way property. Mr. Sohlman's notes record that he was asked by Mr. Bernard to leave the site. Mr. Sohlman said he was not on Finn Way property, told Mr. Bernard so, and remained.

29. Mr. Sohlman's notes record a conversation with Mr. Ouelette. Mr. Ouelette knew Mr. Sohlman who had tried on occasions to get Mr. Ouelette to join the union. According to Mr. Sohlman's notes, Mr. Ouelette approached Mr. Sohlman and asked him if certain named individuals had signed cards. Mr. Sohlman denied that they had. Mr. Ouelette responded that the cards are no good as Mr. Karimi is going to lay the men off. Mr. Sohlman advised Mr. Ouelette that is against the law.

30. Mr. Ouelette said he did speak to Mr. Sohlman but denied references to who had signed cards and said no names were mentioned. Mr. Ouelette said he did speak to other men who volunteered the information that they had signed cards. He said he did not do this at the direction of anyone and he did not report his findings to anyone. Mr. Ouelette also denied discussing with the employees about what would happen to the company if the union were certified. He said he simply discussed his own views and what he presumed would happen to the security of his employment.

31. Mr. Ouelette denied that he told Mr. Sohlman that the men would be laid off because they signed cards. Mr. Ouelette said there was no discussion with Mr. Sohlman about the layoffs at the site.

The events of Friday, May 29, 2009

32. On Friday, May 29, 2009, Mr. Bisignano attended at the SMSC job site. He spoke to Mr. Bernard about the state of the work and then decided to lay everyone off that day. Mr. Bisignano said he had been thinking about doing so for weeks because the work was running out. Mr. Bernard said he would tell the men. Mr. Bisignano left the site.

33. Mr. Bernard told the men in the lunchroom trailer at the afternoon break that they were laid off. Mr. Valdock was not in the trailer at the time but he was told shortly after. There were seven men at work that day (Mr. Ouelette was not there). Mr. Bernard was asked by the men why they were being laid off and he replied a shortage of work. Mr. Lovis asked if the layoff had to do with the union's attendance outside the job site on the day before. Mr. Bernard responded that he did not think so and that there was not anything left to do.

34. Mr. Bisignano said he knew nothing about the union organizing drive when he made the decision to lay off.

35. Mr. Karimi said he was not aware of the layoffs before they occurred and that he did not give instruction or direction in that regard. He said he learned of them from the office staff when they were preparing the layoff documentation.

The remaining work at SMSC after the layoffs

36. The employer says that the layoffs were necessitated by a shortage of work for direct employees which was the result of the natural decline of work at the SMSC job site. The union's evidence, offered largely by the employees who were on that site, differs. Those witnesses say that there remained work that they expected to and should have been performing. Too, both parties rely upon certain documentary evidence.

37. There were two other Finn Way jobs ongoing at that time but there was no substantial evidence advanced that there was carpentry work to do on those jobs at the relevant time.

38. Mr. Bernard said that the work required for Finn Way employees was 98% complete by the end of May 2009. He spoke to Mr. Bisignano the week before the layoffs about the fact that he did not know what work there would be to do the following week. Mr. Bernard confirmed that the decision to lay off was made by Mr. Bisignano.

39. Mr. Bernard says that on May 29, 2009 there was only a small amount of siding and acoustical ceiling left to be done. He said that Messrs. Morriseau and Puukila were working on the acoustical ceiling for two corridors and there was enough work after the layoff for about one man for a week. That work, however, was not ready to be done at the time of the layoffs because the mechanicals were not yet in place. He completed some work, as did Perez.

40. Mr. Bernard said that the workers would not be in a position to know what work needed doing as they receive their assigned tasks from him and he himself is not aware of the broader scope and progression of the work.

41. Mr. Bisignano explained why he laid the men off. He said there was nothing left to do other than a small amount of siding in the courtyard. He spoke to Mr. Bernard who said that once the siding was done he could handle the last odds and ends. The majority of the building was complete. He added too that many people had been laid off during the course of that project. It was conceded, however, by Mr. Bisignano, that the number of people laid off was never more than 2-3 workers on any one day.

42. Mr. Start, the site supervisor who was away when these events occurred, said that when he returned to work on Monday, June 1, 2009, the work at SMSC was complete or near completion. Specifically, he said that neither the drywall nor the siding was completed but they were close. He did agree that there was grid work to be done (the work that Mr. Morriseau had been doing) on June 1, 2009, and work that Perez could finish. Mr. Start agreed too that there was acoustical ceiling to be done on the second floor. He confirmed that ceiling could not be finished until the mechanicals were in.

43. Mr. Start said that while he does not decide to lay off men himself, Mr. Bisignano consults with him on layoffs at his sites.

44. Mr. Start said the SMSC project finished in September 2009 although the anticipated completion date was June 2009.

45. Messrs. Valdock, Lovis and Morriseau testified for the union on what work was left to be done in their view, at the time of the layoffs. They each recall differently than the company witnesses that there was work at SMSC at the time of the layoffs.

46. Mr. Valdock had worked for a little over a year with Finn Way doing drywall, taping, boarding and painting. He worked with Perez and was aware of the system whereby Finn Way charged back his time to Perez. Mr. Valdock had worked on other jobs for Finn Way and had been reassigned when those jobs ended. Mr. Valdock said that Mr. Bisignano said Mr. Valdock would be sent to the Sioux Lookout courthouse to do taping after the SMSC job was finished. He was surprised when he was laid off.

47. Mr. Valdock said that at the time of the layoff he was not even halfway finished the ceiling he was working on. Mr. Bernard ultimately completed the ceilings.

48. Mr. Lovis worked for Finn Way for about a year and a half before his layoff. He worked on a variety of carpentry tasks on different sites in that time. In May 2009 he recalls working on siding in the interior courtyard of the SMSC job site. The siding contractor, J.L. Siding, was working on the site as well, but Mr. Lovis was responsible for one courtyard area. He had been doing this for close to one month with three or four other men. Mr. Lovis recalls that in the last week of May 2009 the project was 75 – 80% complete, with only the siding left to do on the back wall. Mr. Lovis had just finished cutting three pieces of siding for the next wall and was set up to do that work when he was advised of the layoff. He left and the siding remained unfinished.

49. Mr. Morriseau said at the time of his layoff he was mainly doing ceilings and some siding. He said that the ceilings were 80% finished at the time of his layoff. He said that there was a hallway on the other side of the building yet to be completed.

50. On June 1, 2009 and following, Perez completed the ceiling and acoustic tiles. Perez had not been on site for the month of May 2009. It is noted that no payments were made to Perez for work from Finn Way after May 12, 2009. Mr. Karimi said there may have been later payments or an offset.

51. The employer's production schedules indicate that as of June 12, 2009 there remained 31 days of work on acoustical ceiling on the second floor of the project, which the report estimated was scheduled to be finished by July 10, 2009.

Events occurring after the layoffs

52. After Mr. Valdock was laid off on Friday, May 29, 2009, he contacted Mr. Sohlman by phone. Mr. Valdock was upset and conveyed his belief his job loss was because of his association with the union. Mr. Valdock met with Mr. Sohlman and Renzo Rupert, another union representative. Mr. Valdock advised of his conversation with Mr. Ouelette on the Thursday (May 28, 2009) when Mr. Ouelette asked Mr. Valdock if he has signed a card. Mr. Valdock also told Mr. Sohlman that others were laid off and the company would now get someone else to finish the work.

53. Mr. Sohlman said that he tried to call Mr. Morriseau that Friday evening but he hung up on Mr. Sohlman. Mr. Morriseau said he did that because he concluded that Mr. Sohlman was the reason Mr. Morriseau was laid off.

54. Mr. Sohlman also tried to speak to Mr. Lovis that evening. Although he was unable to do so, the men did speak sometime the following week.

55. Mr. Sohlman left a voicemail for Mr. Paul who did not return the call.

56. On May 30, 2009, Mr. Sohlman called Miles Burgess who said he could not have anything to do with "this" and referred to the men who lost their jobs.

57. Mr. Sohlman concluded that the men were angry and blamed the union for their layoffs.

58. Mr. Sohlman met with Messrs. Morriseau and Lovis on June 9, 2009 at a Boston Pizza to discuss what had occurred at Finn Way. That discussion was essentially on the topics about which these men gave evidence at the hearing.

59. A few weeks later, Messrs. Ouelette and Scott were recalled by the company.

60. Mr. Lovis was recalled about two months after the layoff. He said that Mr. Karimi offered him employment if Mr. Lovis agreed to return as a subcontractor. Mr. Karimi denies this. In any event, Mr. Lovis had by that time secured employment through the union and did not return to Finn Way. Mr. Lovis advised Mr. Karimi at that time that Mr. Morriseau was also employed elsewhere and he would not return either.

61. Mr. Valdock says that when he returned to Finn Way to obtain his record of employment, Mr. Karimi said Mr. Valdock could work for the company if he obtained his own GST number and started his own business. Mr. Karimi denies this. Mr. Valdock declined the company's offer to return to Finn Way as he had also obtained alternate employment through the union.

62. There was evidence in this case about the manner in which the company posted the Board's notices in the application for certification. There was also evidence about a Notice of Trespass served by the company on Mr. Sohlman on June 10, 2009. In view of my determinations in this case, I need not address those issues.

The statutory framework

63. The relevant sections of the Act provide:

> **11.** (1) Subsection (2) applies where an employer, an employers' organization or a person acting on behalf of an employer or an employers' organization contravenes this Act and, as a result,
>
> (a) the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote; or

(b) a trade union was not able to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union at the time the application was filed.

(2) In the circumstances described in subsection (1), on the application of the trade union, the Board may,

(a) order that a representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit;

(b) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or

(c) certify the trade union as the bargaining agent of the employees in the bargaining unit that the Board determines could be appropriate for collective bargaining if no other remedy would be sufficient to counter the effects of the contravention.

(3) An order under subsection (2) may be made despite section 8.1 or subsection 10(2).

(4) On an application made under this section, the Board may consider,

(a) the results of a previous representation vote; and

(b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining.

...

70. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

...

72. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

(a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;

> (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
>
> (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.
>
> ...
>
> **76.** No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

Submissions

64. The company outlines the purpose of section 11 of the Act and specifically notes that relief under this section is not a substitute for a union that is not able to achieve membership support on its own efforts. It also highlights that the union must first succeed on its section 96 complaint and prove that a violation of the Act has occurred. In this case, Finn Way says the reason the union did not achieve the requisite level of employee support is because the employees were not interested in the union and not because of any acts of the employer. In any event, the company says that its acts were not contrary to the Act.

65. The company emphasizes that it is entitled to express its views and that there was no anti-union animus underlying its conduct. (see *Dylex Limited*, 1977 CanLII 476 (ON L.R.B.))

66. The company says that the Board is tasked with assessing the effect of the impugned conduct on the average employee. It asserts that some anti-union intent needs to be found in order to ground a violation of section 96 and a consequent remedy under section 11 of the Act. (see: *Dylex Limited, supra*, *Hydro One Inc.*, 2005 CanLII 41,841 (ON L.R.B.), *Keith MacLeod Sutherland*, [1983] OLRB Rep. July 1219)

67. The company reviews the evidence that it says is supportive of its position. It relies on the fact that the union's organizing efforts date back at least to 2005 and that in the years leading up to this certification application, those efforts have been unsuccessful. Finn Way says that the Board should not conclude that the employer's actions in May 2009 were in response to the union attendance at the site, as such attendance was neither new nor unusual.

68. In the company's assessment, this case is about employee choice and permissible employer conduct.

69. As to the application of section 11 relief, the employer emphasizes that it is only available if no other remedy would counter the contravention. The facts derived from the caselaw upon which section 11 certification has been applied are as a result of egregious conduct such as real threats to job security or violence, threats of job loss, company closures or termination of union organizers.

70. The employer contends that in this case Mr. Karimi gave a neutral response upon learning of the card signing from Mr. Paul. Mr. Karimi wanted to ensure that the activity did not occur on company time. There were no threats, coercion or intimidation.

71. Finn Way addresses the factual allegations as follows: (a) the layoffs at the SMSC job site and the work that the union alleges remained on May 29, 2009; (b) the employer's actions and words on the site on May 28, 2009, the day before the layoffs; (c) the union being precluded access to job sites; and (d) the manner in which the Board's materials were posted.

72. In respect of the first point addressed by the company, it describes the roles and duties of each of the managerial and other employees on the SMSC job site. In the last week of May 2009 there were a number of Finn Way employees working on site. Messrs. Lovis and Scott were doing siding. Mr. Valdock was taping. Mr. Morriseau was doing siding and ceilings. Mr. Puukila was doing ceilings. Mr. Ouelette was performing various jobs. Mr. Paul was operating a forklift. Mr.Burgess was doing access doors.

73. The company had subcontracted framing and siding on the SMSC job site. Those contractors were part of the original estimating of that job with the exception of the drywall contracts. Finn Way originally carried the drywall and then Perez was hired.

74. The employer says that by the end of May 2009, the work was winding down; estimated at 98% complete. That coincided with May 29, 2009, a Friday, the end of a pay period and a logical day to effect layoffs. That decision to lay off, in the company's assertion, was arrived at by Mr. Bisignano when he visited the site on the Friday, walked around with Mr. Bernard and concluded that once the siding was completed Mr. Bernard and the subcontractor, Perez, could handle the rest of the work. At this point Mr. Bisignano made the layoff decision.

75. Mr. Ouelette confirmed that he thought there was a shortage of work and expected the layoffs to be done earlier. The employer relies on a list of previous layoffs by the company and says that layoffs are not unusual.

76. Finn Way says that the work done after the layoffs on the SMSC job site was some labourer's work done by a student, then the recall of Mr. Scott (the most senior employee) to do some specialty items and then Mr. Ouelette, the next most senior person, to do some additional specialty items. It relies too on the fact that both Messrs. Valdock and Lovis were recalled but declined.

77. Finn Way addresses the three areas where the union says there was carpentry work to be done and responds as to why the impression that there was work for the Finn Way employees is incorrect. These are: a) siding; b) ceiling tiles; and c) taping.

78. As regards the siding, Finn Way says that that work was originally part of a subcontract with J.L. Siding and that the Finn Way employees were brought in to help. By mid-May there was little left to do. After May 29, 2009 J.L. Siding finished the work as part of its contract. It was not economical for Finn Way to pay its direct forces if the J.L. Siding people could finish the work.

79. As regards the ceilings, Mr. Morriseau said that on the layoff date there were sections left to do on the second floor corridor and in the kitchen. However, the company said that ceiling work could not be done until the mechanical was installed.

80. Finally, as to the taping work, the subcontractor, Perez, was falling behind and Mr. Bisignano asked Perez to bring more men. In order to reduce Perez' costs and expenses, Messrs. Hill and Valdock worked on the taping and their time was charged back to Perez. The company says that by the end of May it was determined that Perez's forces could finish the work remaining and they did so.

81. Finn Way explains why the last invoice for Perez's work is dated May 12, 2009, even though Perez returned to finish work after that date. The company says that the evidence bears out that, as of the end of May 2009, Perez and Finn Way were even in terms of their contract, the payouts and labour costs. The remainder of the work that Perez did after May 2009 was done under its original contract and required no further payments. There were no other sites requiring employees at that time.

82. The conclusion the employer asks the Board to draw from the circumstances described is that there was simply no further work for Finn Way employees to do on May 29, 2009 and that was the reason for the layoffs. It draws the important distinction between lack of work on the site and lack of work for Finn Way direct employees on the site. It contends there was no anti-union motive in the decisions to lay off and that decision was based entirely on the decline in the amount of work.

83. The company addresses next the conduct, role and statements of various individuals upon which the union bases aspects of its case.

84. The employer argues that Mr. Ouelette is not an agent of the employer (see *Alderbrook Industries Limited*, 1981 CanLII 810 (ON L.R.B.)) and any communications he had with employees should not be characterized as being made on behalf of, or at the request of, management. The company highlights that no one instructed Mr. Ouelette to have conversations and in any event he denied the statements attributed to him by the applicant.

85. The company asks the Board to accept Mr. Karimi's version of what occurred at the job site when he was approached by Mr. Paul, who said he had been tricked into signing a union card. The company asserts that Mr. Karimi said he did not speak directly to anyone else nor did he solicit information from Messrs. Ouelette or Bernard about who was signing cards. Finn Way contends that Mr. Karimi's version is consistent with Mr. Morriseau's evidence that Mr. Karimi did not speak to him directly. Mr. Karimi's only concern, a legitimate one, is that organizing efforts not take place on company time.

86. The company says this case is similar to *L & L Painting and Decorating Ltd.*, 2007 CanLII 43736 (ON L.R.B.) where the Board denied section 11 relief in a situation where it found that a layoff of one employee due to a temporary downturn in work was not tainted by anti-union animus. Although the Board did find violations of sections 70, 72, and 76 of the Act, it concluded that a remedy short of certification was appropriate. It is noteworthy in that case that the Board concluded that the termination of the union organizer was not likely noticed by other employees until after the application date.

87. As I indicated above, given my conclusions in this case, I need not address the impact, if any, of the company's conduct in relation to the union access to the job site or the posting of the Board's materials.

88. As to the union's request for reinstatement and declarations, the company notes that certain workers did not testify and an adverse inference should be drawn. It also relies on the fact that Messrs. Lovis, Morriseau and Valdock refused to return to work for Finn Way and found work elsewhere.

89. The union focuses chiefly on the events surrounding Mr. Karimi's visit of May 28, 2009, the process of the employer learning about the card signing, the proximity in time of those events to the layoffs and the state of the work at the time of the layoffs. It relies heavily on Mr. Sohlman's notes.

90. On the issue of credibility, the union suggests that Mr. Karimi's evidence was generally vague and his responses lacking in specificity. It contrasts that characterization with its own witnesses, Messrs. Morriseau and Lovis, who evidenced a clear recollection of a 10-15 minute meeting where Mr. Bernard was in attendance and Mr. Karimi did the talking.

91. The union says it does not matter how Mr. Karimi's "meeting" is characterized. It is an acknowledgment by the employer of its knowledge of the union organizing in the form of card signing. The union argues that it is irrelevant that organizing had gone on for years as it only really takes on meaning when cards are signed. So factually, by Thursday, May 28, 2009, the employer had found out that union cards were being signed.

92. The union says that Mr. Ouelette asked about specific people in relation to the card signing and then qualified that he was talking about events from one year earlier. The union says that it is likely that Mr. Ouelette conveyed to management what he learned about the union's card signing campaign.

93. Regarding the company's assertion that the work the laid off employees could have done at SMSC was almost complete at the time of the layoffs, the union says that it makes no sense that the ceiling, drywall and siding all come to an abrupt end all at the same time. It relies on the evidence of the employees that there was still work to do. The union says that its witnesses are more credible as to the progress of the work and the documents bear out their recollections. In that regard, the applicant says that it is untrue that there was a work shortage rationale for the May 29, 2009 layoffs.

94. The union deals specifically with the role of Perez, the subcontractor. The union emphasizes that Perez's last invoice is dated May 12, 2009 and that Perez was not on site at the time of the layoffs. The union says it is impossible to believe that Perez did not receive any

money for the work the employer alleges Perez did after the layoffs. It is also a Toronto area subcontractor, not easily accessible on Thunder Bay projects. It seems unlikely that Perez would be called back to finish work when the men who had been working on it were laid off.

95. Mr. Lovis said that the interior courtyard and siding remained to be done.

96. The union also refers to the June 12, 2009 revision of the production schedule for SMSC and notes that there is reference to acoustical ceiling yet to be done.

97. The union disputes the employer's assertion that Mr. Valdock was brought in to get Perez caught up. Mr. Valdock was employed steadily before that time doing drywall and finishing. The fact that Perez returned after the layoffs and there is no record of payment after May 12, 2009, in the union's view, gives rise to further suspicion as to why Mr.Valdock was laid off.

98. The union accepts that Messrs. Ouelette and Bernard are not managerial in the way contemplated by the Act and the Board's jurisprudence. However, it asserts that those individuals acted on behalf of management in reporting on the union activities. The union says that it was on the basis of the information they provided that the company decided, in order to ensure the union did not succeed in certification, to lay off everyone and sort out who signed cards later. That serves two purposes: there were no employees at work on the application filing date and there was conveyed a clear message to employees that the card signing would lead to job loss.

99. The union relies on the timing of the material events. The union emphasizes that Mr. Sohlman's notes of Thursday, May 28, 2009 record that Mr. Ouelette said that the cards are no good as Mr. Karimi would be laying the men off. Layoffs occurred the very next day.

100. As to the impact on the campaign, the union says that it is clear from the evidence that each of Messrs. Morriseau, Lovis and Valdock blamed Mr. Sohlman for the job loss. Mr. Burgess and Mr. Paul would not communicate with Mr. Sohlman after the layoffs.

101. The union relies on the following cases: *1443760 Ontario Inc. (operating as Swing Stage Equipment Rentals Ottawa)*, 2007 CanLII 22573 (ON L.R.B.), *JAK Electrical Contractors Ltd.*, [1997] O.L.R.D No. 4414, *Southend Drywall & Acoustics Ltd.*, 2010 CanLII 13074 (ON L.R.B.), *East Elgin Concrete Forming Limited*, 2007 CanLII 29221 (ON L.R.B.).

102. The union says that the evidence clearly establishes a breach of sections 70, 72 and 76 of the Act and asks the Board for declarations that the company has breached those provisions of the Act. It seeks no findings as against the named individual responding parties.

103. The union also asks the Board to certify the union for the breaches of the Act as it says that no other remedy can undo the damage of the layoffs.

104. The union seeks no reinstatement but asks the Board to remain seized as to its request for damages for lost wages for Messrs. Valdock, Morriseau and Lovis and the quantum of any such damages, if awarded.

105. In response, the employer again highlights the distinction between the job being at an end and the work of the Finn Way employees on the job. The employer does not deny that there was work to be done at the SMCS job site after May 29, 2009, but disputes that there was work to be done for Finn Way employees.

106. The employer says that this case does not call for section 11 relief as it is based on assumption and suggestion. Certification relief should be reserved for clear cases involving significant conduct. The intent of the employer in this case is just assumed and, in its view, remains unproven.

107. The employer says that Mr. Sohlman's notes say that Mr. Karimi knew that cards were signed when the evidence of Mr. Karimi was that he knew of one card; that of Mr. Paul.

108. The company asks the Board to conclude that there is no violation of the Act that would support a section 96 finding against it for section 11 relief. In the result, it asks the Board to dismiss both applications.

Decision

109. In determining this case I analyzed the facts and relevant law in two parts: (a) whether the employer has engaged in unfair labour practices in breach of sections 70, 72 and 76 of the Act; and (b) if yes, whether those contraventions should lead the Board to grant certification under section 11 of the Act because no other remedy would suffice to counter the effects of the violations.

Does the evidence support unfair labour practice findings?

110. This rests on the analysis of the facts relating to Mr. Karimi's site visit, the layoffs and the progression of the work at the time of the layoffs. In the event that I find that the layoffs were motivated, in whole or in part, by the union organizing campaign, specifically in this case the knowledge that cards were being signed, then breaches of the Act have been made out. If I find that the employer's knowledge played no part in the layoff decision then the case for relief is not there.

111. There are competing versions of some of the material facts. I begin with an assessment of the credibility of the witnesses to determine which of the facts are more likely to have occurred.

112. First I consider the events of Thursday, May 28, 2009. There is no internal or external consistency with the employer's version of events. Mr. Karimi denied a meeting yet he did indicate that he spoke with Mr. Paul and others may have overheard. Mr. Bernard denied that Mr. Karimi was on site at all. On the other hand all the union witnesses report that a meeting of some type occurred on that date on the site. There was a gathering of the men on site at which time Mr. Karimi spoke. That is said not only by the union witnesses but is also highly more probable in all respects than a spontaneous and unsolicited admission by Mr. Paul that he signed a union card. I am persuaded that some sort of meeting occurred and that words were spoken dealing with the union organizing campaign. This establishes the employer's knowledge of the union organizing activity. Where the evidence conflicts I prefer that of Mr. Morriseau to Mr. Karimi's. Mr. Morriseau's evidence was internally consistent and simply made more sense.

Mr. Karimi's, on the other hand, was vague and the employer witnesses who gave evidence to buttress his clearly were not consistent.

113. I turn next to what Mr. Karimi's likely response was to this knowledge. He said he did nothing and spoke to no one about it. It seems highly unlikely that Mr. Karimi would learn of card signing (at a minimum of Mr. Paul) and not mention it to Mr. Bisignano. Mr. Karimi's evidence was not consistent on this point, being an admission in re-examination and a denial in chief and cross-examination.

114. Mr. Karimi's version that he only spoke to Mr. Paul also stands in contradiction to Mr. Sohlman's notes. The content of those notes indicated that Mr. Ouelette is of the view that Mr. Karimi is aware that cards (not just one card) have been signed, and that Mr. Karimi intends to respond to that fact by laying off the men.

115. I prefer the written notes of Mr. Sohlman to the evidence of Mr. Ouelette. The notes are contemporaneous, withstood the test of cross-examination and were consistent with the main event that did occur– the men were laid off the next day.

116. The conversation between Mr. Ouelette and Mr. Sohlman on May 28, 2009 is compelling evidence in this case. Mr. Ouelette referred to the fact that Mr. Karimi would lay the men off. Given that the layoffs did occur as Mr. Ouelette predicted, I conclude that Mr. Ouelette conveyed to Mr. Sohlman what Mr. Ouelette learned from either of Mr. Karimi or Mr. Bisignano: that layoff would be the company's response to the union organizing efforts. There is a clear connection between Mr. Ouelette's prediction on May 28, 2009 and Mr. Bisignano's actions on May 29, 2009.

117. It is then equally clear that the reason or cause for the layoffs was the union activity. I agree that Mr. Ouelette was not managerial. But his role, as evidenced by his discussion with Mr. Sohlman, assists in my determination of what the company knew of the organizing drive. Either of Mr. Karimi or Mr. Bisignano reacted to the organizing drive by ordering the layoffs. This is consistent with what Mr. Ouelette said on the day before the layoffs, irrespective of Mr. Ouelette's role in the company.

118. As to the progression of the work, I prefer the evidence of Messrs. Valdock, Lovis and Morriseau over that of the company witnesses. First, they presented their evidence in a very forthright and specific manner, noting precisely what they recalled they were working on when they were laid off. Second, their evidence accords more consistently with the production records and with the fact that Perez was not on site at the time of the layoffs. On the other hand, the recollection as to what was left to be done offered by Mr. Bernard was vague.

119. There are other factors supporting this conclusion. Mr. Bisignano said he had never laid off 8 men in one day; the most was "maybe 3". That is a large number of employees to be laid off abruptly. There was no evidence that employees were told earlier in the week that the work was winding down. The documents support that there was, at a minimum, acoustical ceiling on the second floor. The subcontractor was apparently called in to finish the precise work that the Finn Way employee, Mr. Valdock, was doing when he was laid off. The progress of the work does not support the employer's version.

120. There was no evidence that any layoffs had been talked about, other than Mr. Bernard saying that he expected one before. I find that evidence self-serving. Each of Messrs. Valdock, Lovis and Morriseau had been with the employer for more than a year at the time of the layoff. To lay them off en masse and have the work they had been doing completed by others, whatever minor amount of work there may have been, is not consistent with a gradual and natural reduction of work at a site and particularly so given the other factors described in this case.

121. I am further not persuaded by the argument that because the union had been present at Finn Way work sites for many years, the employer had no particular reason to act in a manner that undermined the union on this occasion. Union organizers speaking to employees and visiting worksites do not give rise to the same level of attention and diligence as knowledge of union membership cards being signed. Card signing signals employee interest; not just organizing effort on the part of the union. It is quite believable that it was only when the company learned of some success in obtaining signed cards that it felt the need to act.

122. Perhaps had the employer not chosen to terminate the union organizing drive by laying off all the employees, the support would not have been there for the union. But that is speculative. The employer took matters into its own hands to ensure that the drive would not succeed when it learnt that there was more momentum for certification than during earlier efforts. Once it did so in these circumstances, it violated section 96 and denied the employees the right to make a free choice to which they were entitled under the Act. The company ensured that the employees equated job loss with union organizing. It ensured that employees would be unwilling to engage with the union. And, it ensured that the union could not use its cards to file for certification as there would be none of the card signers at work on the date of application.

123. On the facts and explanations there is no other logical conclusion to reach but that Mr. Karimi realized from his May 28, 2009 visit to the SMSC (or was told shortly before that visit) that the union organizing was gaining momentum and that union cards were being signed. He saw no way to counter that activity short of laying off all the employees.

124. In sum, the layoffs were not gradual, they did not accord with the credible witnesses' recollections and the documents of what work was still to be done, they were of a greater number than ever before and they occurred one day after the employer learned that union cards were signed. Most significantly, the layoffs were consistent with the information Mr. Sohlman gained from Mr. Ouelette that the cards would be no good because Mr. Karimi was going to lay these employees off.

125. The layoffs were imposed by the employer in response to the union activity and as such violated the Act. Specifically, Finn Way interfered with employees' rights to select or be represented by a trade union contrary to section 70 of the Act. The company refused to continue to employ employees because they were exercising protected rights under the Act, contrary to section 72 (a) of the Act. Finally, the job loss amounted to coercion in compelling the employees not to be members of the union or exercise rights protected under the Act, in violation of section 76 of the Act.

126. For these reasons, I find that the employer violated sections 70, 72 and 76 of the Act in the layoffs of May 29, 2009. The employer prevented the laid off employees from exercising rights to which they are entitled under the Act, used job loss as a way of interfering with the exercise of those rights, and ensured that the employees could not choose the union to represent them.

Whether the violations should give rise to certification pursuant to section 11

127. A remedy under section 11 requires that the union demonstrate that it was unable to obtain the requisite support "as a result of" the employer's unlawful conduct. On these facts it is clear to me that the union was garnering some support and that its campaign was brought to an abrupt and untimely end by the layoffs. The union had obtained signed membership cards. It was speaking to employees. For the reasons I explained above, it is not a sufficient response for the employer to argue that the union has been unsuccessfully trying to certify and/or that it would not have had any success in this event even if not for the conduct of the employer. The employer's actions ended the campaign.

128. The Board said at paragraph 56 of *1443760 Ontario Inc. (operating as Swing Stage Equipment Rentals Ottawa), supra*:

> 56. The employer suggests that the campaign was effectively over, the employees expressed their views and there was no support for the union. It says that the campaign was dead before the termination of Mr. McCarthy. I find that it is of no value to speculate on whether the union would have obtained the required support were it not for the company's contraventions. The employer did not allow the drive to take its course and did not allow the employees to exercise a free choice. It cut off that choice by putting job security at issue.

129. The employer relies on the later recall of some of the men. The recall of certain men well after the fact does not assist the employer in this case and does not fall within the analysis in *K.D. Clair Construction Ltd.*, 2008 CanLII 7517 (ON L.R.B.). In that case the employer immediately acknowledged the breach in a letter to all employees, offered reemployment to the union organizers. In refusing to order remedial certification, the Board noted that the union failed to establish that the terminations had any impact on the campaign as it did not attempt to obtain further support. The causal connection required by section 11 was not found.

130. In this case there are significant distinctions. All the Finn Way employees were laid off. The laid off employees were not recalled until some time after. By that point there had been significant attempts from the union to see if employee interest could be sustained. It was clear from the responses to Mr. Sohlman's efforts that the employer's message to employees was clear.

131. Further, this case is not like the one relied on by the employer, *L & L Painting and Decorating Ltd., supra*, where the union filed a section 11 request immediately after a layoff when the layoff could not be associated with the organizing campaign.

132. In this case the employees were not willing to speak to Mr. Sohlman immediately following the layoff. They blamed the union and not the employer for the layoff. Faced with that response by the employer, the union could not hope to communicate with employees and, more importantly, the employees were deprived of the opportunity to decide whether or not, free of threat, they would choose to organize.

133. On these facts I am convinced that the trade union was not able to demonstrate requisite support for certification "as a result of" the employer's contraventions.

134. I turn now to a consideration of remedy under section 11(2). That section requires a consideration as to whether a remedy short of certification would be sufficient to counter the effects of the contravention.

135. The union's uncontradicted evidence as to what occurred after the layoffs speaks clearly to the impact of this kind of employer conduct on the workers. The men did not want to speak to Mr. Sohlman, blamed him and the union for the layoffs. The connection was clear in their minds. The conclusions to be drawn were unquestionable and the far reaching effects on workers were evident from all the conversations Mr. Sohlman recorded after the layoffs. The question is whether the employees who are laid off for joining a union can be expected to approach a voter's booth without that threat in mind. In these circumstances, I am of the view that they cannot. Here, once the employer puts job security in issue, there is nothing the Board can do by way of remedy in the form of notices, declarations, reinstatement or other ancillary relief that will allow employees to enter a voter's booth free of the threat of job loss. I therefore conclude that no remedy other than certification can counter the effect of the violations.

Summary of Determinations and Remedies

136. I therefore declare that Finn Way breached sections 70, 72 and 76 of the Act when, as a result of union activity, it laid off eight employees on May 29, 2009.

137. I find that the remedy for the violation is found in section 11 of the Act and certify the union as no other remedy would be sufficient to counter the effects of the contravention.

138. Accordingly, a certificate will issue to the applicant affiliated bargaining agent on its own behalf and on behalf of all other affiliated bargaining agents of the United Brotherhood of Carpenters and Joiners of America and the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America in respect of all carpenters and carpenters' apprentices in the employ of Finn Way General Contractors Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.

139. Further, a certificate will issue to the applicant trade union in respect of all carpenters and carpenters' apprentices in the employ of Finn Way General Contractors Inc. in all sectors of the construction industry in the District of Thunder Bay and the District of Kenora including the Patricia portion, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.

140. I remain seized to determine any compensation to employees.

141. Finally the employer is directed to post copies of this decision and the attached Notice to Employees in the workplace immediately, in a location or locations where they are most likely to come to the attention of those individuals who may be affected by it. These copies must remain posted for a period of 30 days.

APPENDIX "A"

The Labour Relations Act, 1995
NOTICE TO EMPLOYEES
Posted by order of the Ontario Labour Relations Board

This notice has been posted in compliance with a direction of the Board, issued after a proceeding in which both the company and the union participated.

The Ontario Labour Relations Board found that Finn Way General Contractors Inc. violated the *Labour Relations Act, 1995,* by terminating the employment of employees for union organizing activity, contrary to the Act. The Ontario Labour Relations Board further concluded that, as a result of the violation, the true wishes of the employees were not likely to be ascertained in a representation vote, and it certified the union as bargaining agent for the group of employees described as:

> all carpenters and carpenters' apprentices in the employ of Finn Way General Contractors Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of the responding party in all other sectors of the construction industry in the District of Thunder Bay and the District of Kenora including the Patricia portion, save and except non-working foremen and persons above the rank of non-working foreman.

Employees in Ontario have these rights which are protected by law:

- To organize themselves;
- To form, join and participate in the lawful activities of a trade union;
- To act together for collective bargaining;
- To refuse to do any and all of these things.

This is an official notice of the Board and must not be removed or defaced.

This notice must remain posted for 30 consecutive days.

DATED this 19th day of May, 2011.

0736-09-U Graham Bros. Construction Limited, Applicant v. Labourers' International Union of North America, Ontario Provincial District Council and International Union of Operating Engineers, Local 793, Responding Parties

Construction Industry – Evidence – Practice and Procedure – Witness – The union sought production of witness notes that were protected by litigation privilege – The Board followed the Court's decision in *Kennedy v. McKenzie* which set out a number of exceptions to the claim of privilege – The Board noted that there did exist another reasonable form of evidence that could provide the information that the union sought, namely, the witness may testify under oath before the Board – The Board also noted that while it had the authority to accept the evidence pursuant to s. 111(2)(e), it chose to exercise its discretion to follow the Court's approach in this instance – The Board declined to order the employer to produce the notes – Matter continues

BEFORE: *Diane L. Gee*, Alternate Chair.

DECISION OF THE BOARD: June 30, 2011

1. The Labourers' International Union of North America, Ontario Provincial District Council (the "Labourers" or the "Union") seeks a Board order requiring Graham Bros. Construction Limited (the "Employer") to produce what are referred to in this decision as "witness notes". The Union acknowledges the witness notes are protected by litigation privilege but argue that such protection ought to be set aside for two reasons. First, the notes are the most contemporaneous recording of events available. Second, the notes are relevant to how the allegations in issue came to be voiced by the employees. The Employer resists production of the witness notes.

2. The Employer alleges that, during the course of a union organizing campaign, Union organizers told employees that the Union had sufficient cards to be certified and the employee could sign a membership card then and pay $50.00 or wait until the Union was certified and pay amounts ranging up to $1,000. These statements are alleged to have been made in or about December 2008. The allegations came to the attention of the Employer in or about late May 2009. The Employer immediately conducted an investigation. Part of the investigation involved legal counsel as well as Ken Richardson, a senior management employee of the Employer, interviewing employees. At these interviews, counsel asked the employees questions and Mr. Richardson took notes. Very shortly thereafter, the instant application was filed by the Employer. It is the notes taken by Mr. Richardson that the Union seeks.

3. Given that the Union acknowledges that the witness notes are protected by litigation privilege, the issue for the Board is whether such privilege ought to be set aside.

4. The Union, relying on *Graham Bros. Construction Ltd.*, [2001] OLRB Rep. September/October 1163 argues that the privilege ought to be set aside as the witness notes in issue herein are, albeit that they were created six months after the alleged events, the most contemporaneous record of the events. The Union further argues that the notes are relevant to the issue of how the employees came to voice the statements that underlie the allegations.

5. Facts similar to those present in the instant matter were considered by the Ontario Superior Court of Justice in *Kennedy v. McKenzie*, [2005] O.J. No. 2060. In *Kennedy*, the Ontario Superior Court of Justice entertained an appeal from a decision of a Master in which the

Master decided that two written statements taken from the plaintiff nine months after the events in issue were not protected by litigation privilege on the basis that "the interests of justice favour disclosure over non disclosure" because the notes were the only record of the plaintiff's recollections reasonably contemporaneous with the events.

6. On appeal, the Ontario Superior Court of Justice determined that the notes were protected by litigation privilege that ought not, in the circumstances of the case, be pierced. The Court disagreed with the Master's reliance on the "interests of justice" in his determination that disclosure was warranted. In the Court's view, once litigation privilege has been made out, the sole fact that the "interests of justice" favour disclosure does not provide a basis to defeat the privilege. Further, the Court did not accept that the notes, created nine months after the events, were "contemporaneous".

[sic]6. The Court acknowledged that litigation privilege is not absolute and can be set aside. The following exceptions to a claim of privilege were recognized:

- The innocence of an accused person is at stake.
- The materials involve communications that are themselves criminal or are made with a view to obtaining legal advice to facilitate the commission of a crime.
- The privilege has been waived.
- The Rules of Procedure provide for the document's production.
- The materials are relevant to the proof of an issue important to the outcome of the case and there is no reasonable alternative form of evidence that can serve the same purpose.

The only exception that could potentially have applied in the *Kennedy* case was the last one listed above. In that respect, the Court was not persuaded that there was no reasonable alternative form of evidence that could provide the information the defendant was seeking (i.e. the plaintiff's account of the events). The Court concluded that the plaintiff's account of the events could be elicited, under oath, at his examination for discovery and thus it was not necessary to set litigation privilege aside.

7. Having regard to the comments in *Kennedy*, the fact that disclosure of the notes would serve "the interests of justice" is not sufficient to set litigation privilege aside. Further, given that the witness notes that the Labourers seek were prepared six months after the events, they were not prepared "reasonably contemporaneous with the events". The question that *Kennedy* suggests ought to be asked is whether there is any other reasonable form of evidence that can provide the information that the Labourers seek. The answer to that question is affirmative. The individuals who were interviewed by legal counsel and Mr. Richardson and whose responses are recorded in the witness notes will testify under oath in this proceeding. The union can, at that time, elicit from them their version of the events.

8. I recognize that the Board has the power, pursuant to section 111(2)(e) of the *Labour Relations Act, 1995,* to accept evidence as in its discretion it considers proper whether admissible in a court of law or not. However, I consider the analysis brought to bear on this issue by the Court in *Kennedy* to be appropriate and to strike the correct balance in the circumstances before me. Thus, while I have the power to deviate from the approach taken by the Court, I choose to exercise my discretion so as to follow the Court's approach in this instance.

8. For the foregoing reasons, I decline to order the Employer to produce the witness notes.

1065-08-HS; 1232-08-HS; 1142-08-HS; 1958-09-HS Hardwall Construction Ltd., Applicant v. The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, Universal Workers Union L.I.U.N.A. Local 183, The International Union of Operating Engineers, Local 793 and Neil Martin, Inspector, Responding Parties; Aviance Forming Ltd., Applicant v. The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, The International Union of Operating Engineers Local 793, Universal Workers Union L.I.U.N.A. Local 183, Neil Martin, Inspector, Responding Parties; Riverton Forming Incorporated, Applicant v. The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, Universal Workers Union L.I.U.N.A. Local 183, The International Union of Operating Engineers, Local 793 and Guy Costa, Inspector, Responding Parties; Avenue Building Corporation, Applicant v. The International Union of Operating Engineers, Local 793, and Mr. Jeff Lomer, Inspector, Responding Parties v. Universal Workers Union, L.I.U.N.A Local 183, Intervenor

Construction Industry – Health and Safety – Four different construction contractors filed individual applications pursuant to section 61(1) of the *Occupational Health and Safety Act* (OHSA) involving incidents concerning the operations of tower cranes and subsequent Orders made by various Ministry of Labour Inspectors – In each situation the Inspector required the contractor to produce a report by a professional engineer stating that the equipment, machine or device "was not likely to endanger a worker" pursuant to section 54(1)(k) of the OHSA – Each of the applicants retained an engineering firm who produced reports which were deemed to be unacceptable by the various Inspectors because they did not use the specific phrase "not likely to endanger a worker" – The applicants argued that the engineers' reports should not have to use this specific wording – The Board found that section 54(1)(k) of the OHSA clearly reflects the intent of the Legislature to require the employer to provide a report written by a professional engineer that precisely states that the equipment, machine or device is "not likely to endanger a worker" – The Board stated that these precise words create consistency of assessment and minimize confusion or debate among inspectors as to what benchmark must be reached in the content of an engineer's report – The Board was of the view that it was reasonable for an Inspector to conclude that if a professional engineer's report did not state that the equipment, machine or device was "not likely to endanger a worker", a danger or hazard persisted and a stop work order was necessary – The Board also noted that the Inspectors' decisions in these cases not to lift the stop work orders or non-use restrictions were justified, as many of the conditions which gave rise to the orders were not resolved – In conclusion, the Board found that all four construction contractors in these applications were not in compliance with the Inspectors' Orders and dismissed the applicants' appeals

BEFORE: *John D. Lewis*, Vice-Chair.

APPEARANCES: *Norm Keith, Cathy Chandler, Ernesto Arduini, Mike Burrell* and *Bernard Ennis*, appeared for Hardwall Construction, Aviance Forming Limited and Riverton Forming Inc.; *Carl Peterson* and *Ken Watkins* appeared for Avenue Building Corporation; *Jesse Kugler* and *Walter Tracogna* for the Carpenters District Council; *James Robbins* and *Melissa Atkins-Mahoney* for the Operating Engineers, Local 793; *David McCaskill, Mike Bibeau, Neil Martin* and *Goran Blanusa* for the Ministry of Labour and *Guiseppe Agostino* and *Lance King* appeared for LIUNA Local 183.

DECISION OF THE BOARD: June 14, 2011

1. These are four (4) applications pursuant to section 61(1) of the *Occupational Health and Safety Act,* R.S.O. 1990, c. O.1, as amended (the "Act" and/or the "OHSA") filed by four (4) different construction contractors. These applications were listed together for hearing as they all have similar fact scenarios involving incidents which occurred at various job sites that involved the operation of tower cranes and subsequent Orders made by various Ministry of Labour Inspectors. All of the Inspectors involved in these matters required a report by a professional engineer stating that the equipment, machine or device was not likely to endanger a worker, pursuant to section 54(1)(k) of the OHSA. These appeals were, for a period of time, adjourned *sine die* in the hopes that the parties would be able to arrive at an "industry solution" to the issues raised in the appeals. The parties were not able to agree on a solution and thus the appeals came back on for determination by the Board.

2. Board File No. 1065-08-HS is an appeal filed by Hardwall Construction Ltd. ("Hardwall") of Orders #2 and #3 issued pursuant to sections 54 (1)(k) and 57 (6)(b) of the OHSA by Inspector Martin on June 9, 2008, in Field Visit No. 5526723. The Ministry of Labour, on behalf of Inspector Martin, filed a Response in this mater. The International Union of Operating Engineers, Local 793 ("Operating Engineers") was identified as a responding party as it is a trade union that represents workers in this matter. Initially, the Operating Engineers response came from the Formwork Council of Ontario of which it is a member. However, during the course of these proceedings, the Operating Engineers took the position that various members of the Formwork Council of Ontario had differing views on some of the issues in dispute. As a result, the Formwork Council of Ontario withdrew its response and the Operating Engineers filed its own Response in this matter. Likewise, the Universal Workers Union, Labourers International Union of North America, Local 183 ("LIUNA 183") and The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, (the "Carpenters") were also identified as responding parties and filed respective responses.

3. Board File No. 1232-08-HS is an appeal filed by Aviance Forming Ltd. ("Aviance") of Orders #1 and #2 issued pursuant to sections 93(2) and 158(l) of O. Reg. 213/91 of the Act by Inspector Martin on June 25, 2008, in Field Visit No. 5526748. Aviance also appeals subsequent Orders made by the same Inspector, in particular Orders #1 and #2 issued pursuant to sections 54(1) (k) and (l) of the OHSA made on June 27, 2008 in Field Visit No. 5526751. The Ministry of Labour, on behalf of Inspector Martin, filed a Response in this matter. Likewise, the Operating Engineers, LIUNA Local 183, and the Carpenters all filed responses in this matter.

4. Board File No. 1142-08-HS is an appeal filed by Riverton Forming Incorporated ("Riverton") of Orders #3 and #4 issued pursuant to sections 54(1) (k) and (l) of the OHSA by Inspector Costa on June 11, 2008, in Field Visit No. 6034635. The Ministry of Labour, on behalf of Inspector Costa, filed a Response in this matter. The Operating Engineers, LIUNA Local 183, and the Carpenters all filed responses in this matter.

5. Board File No. 1958-09-HS is an appeal filed by Avenue Building Corporation ("Avenue") of Orders #4 and #7 issued pursuant to sections 54 (1)(k) and 54 (1)(f) of the OHSA by Inspector Lomer on September 2, 2009, in Field Visit No. 5931343. The Ministry of Labour,

on behalf of Inspector Lomer, filed a Response in this mater. The Operating Engineers were identified as a responding party as it was a trade union that represented those workers in this matter. The Operating Engineers filed its own Response in this matter. LIUNA Local 183 filed an intervention in this matter.

The Agreed to Evidence

6. As it relates to Board File Nos. 1065-08-HS, 1232-08-HS and 1142-08-HS, the respective parties to these appeals were able to agree on a Statement of Facts the full content of which is set out in the attached Appendix to this decision.

7. In brief, the Agreed Statement of Facts discloses that Hardwall, Aviance and Riverton, after receiving a visit/inspection from a Ministry of Labour Inspector, were all subject to various Orders that resulted in certain tower cranes being stopped from performing work (i.e. pursuant to s. 54(1)(l), 57(6)(b) of the Act and s. 93(2) of O. Reg. 213/91). In each instance, the Inspectors ordered the applicable construction contractor to provide a written report of a professional engineer stating that the equipment, machine or device is "not likely to endanger a worker" pursuant to section 54(1)(k) of the OHSA .

8. All of the construction contractors individually retained the engineering firm of Burrell and Associates Incorporated, ("Burrell & Associates"), and specifically, R.J. Ambrozy P. Eng. ("Ambrozy") of that firm, who provided written reports bearing the seal and signature of the professional engineer but which did not state the applicable tower cranes were "not likely to endanger a worker".

9. In the case of Hardwall, Ambrozy's report indicated the tower crane was now operating normally and in the engineer's opinion could be placed back into service. In Aviance's situation the professional engineer report of June 27, 2008 commented on some turntable bearing bolts and stated "we believe that the existing turntable bolts are still suitable for the operation of the crane until new bolts are installed". As it concerns Riverton, the professional engineer's report stated "the crane capacity in third gear is adequate for the intended loads on this project... the gearbox in my opinion can be used in third gear in accordance with the manufacturer's load chart."

10. All of the respective reports written by Ambrozy were determined to be unacceptable by the various Inspectors as the reports did not use the specific phrase "not likely to endanger a worker". In each case, the various Inspectors refused to lift the various Orders that had restricted the use of the applicable tower cranes. The construction contractors involved then each retained a Mr. Dennis Lee, P. Eng., ("Lee"), a professional engineer with Magna Tech NDT Services ("Magna Tech"), who provided each of the contractors with various reports which specifically stated the applicable tower cranes were "unlikely to endanger a worker". As a result, the Inspectors lifted the various Orders that had restricted the use of the applicable tower cranes.

11. At the hearing into this matter, counsel for Avenue indicated the parties had agreed to amend the second paragraph of Order #7 to read as follows:

> "Avenue Building Corporation shall ensure that the person conducting the testing and producing the report for the incidents relating to the Kodiak KL 250 Serial #80-027 be a professional engineer with control systems experience".

Therefore, in accordance with the parties' agreement, the Board amends the second paragraph of Order #7 as identified above. As a result of this amendment, Avenue no longer seeks the appeal of Order #7.

12. As it concerns the facts involving Avenue's appeal, the parties agreed that Inspector Lomer's Narrative from Field Visit No. 5931343, as it concerns Order #4, would form the substance of the agreed to facts as it concerns Avenue, as follows:

> An Inspector may, for the purposes of carrying out his or her duties and powers under this act and the regulations, (k) require in writing an employer to have equipment, machinery or devices tested, at the expense of the employer, by a professional engineer and to provide, at the expense of the employer, a report bearing the seal and signature of the professional engineer stating that the equipment, machine is not likely to endanger a worker.
>
> Avenue Building Corporation shall provide a report bearing the seal and signature of the professional engineer stating that the Kodiak KL 250 Serial #80-027 equipment, machine or device is not likely to endanger a worker.
>
> The Kodiak KL 250 Serial #80-027 was involved in two incidents (August 27 & 31, 2009) where the crane had a load lifted in the air and the operator was unable to control the load's descent. A technician observed and believed the cause of the incident was corrected however a similar incident happened after the crane was put back into service when pouring concrete.

The Evidence of the Witnesses

Ernest Arduini

13. In addition to the agreed upon evidence, which the Board accepts, the Board heard evidence from three (3) witnesses called by the applicants. Mr. Ernesto Arduini ("Arduini"), is the Executive Director of the Ontario Formwork Association (the "Association"). Hardwall, Aviance and Riverton are members of the Association. The Association assists in labour negotiations on behalf of certain formwork contractors in order to achieve standard or uniform terms and conditions for work in the low-rise residential and high-rise residential sectors of the construction industry.

14. Arduini testified that in the Greater Toronto Area (the "GTA"), approximately 80% of the tower crane inspections or engineering work done with the members of the Association is performed by the engineering firm of Burrell & Associates. Arduini indicated that since 2008 it was the belief of the Association and its members that Ministry of Labour Inspectors had changed their practice concerning the required language and acceptability of engineering reports provided pursuant to s. 54 (1)(k) of the OHSA. Arduini, who is not a professional engineer, testified that it was the Association's belief that the Ministry of Labour was taking a closer look at its industry due to a number of tower crane accidents which had recently occurred in the United States. As a result, Arduini speculated that Ministry of Labour Inspectors were now requiring engineering firms, like Burrell & Associates, to expressly include in their engineering reports the phrase "not likely to endanger a worker". Arduini indicated that there had been a reluctance on behalf of Burrell & Associates to use the phrase "not likely to endanger a worker", and, as a result, many of the Association's members were being forced to find other engineering firms or professional

engineers, who, in his opinion, were not as experienced as Burrell & Associates as it pertains to cranes.

15. Arduini testified that in 2008-2009, the member contractors of the Association had 200-250 crane inspections and that typically there would be 30-50 employees employed in relation to servicing a single crane. Most cranes are rented and, as such, there are significant economic ramifications to one of the members of the Association if a crane sits idle.

16. In cross-examination, Arduini admitted that outside of the GTA he did not know how other formwork contractors dealt with the issue of the language of section 54(1)(k) of the OHSA in the context of professional engineers' reports. He admitted he was not in a position to assess or qualify whether a particular professional engineer or engineering firm was competent or not. Arduini also confirmed that, eventually all of the applicants in the present four (4) appeals were able to retain a professional engineer who provided professional engineering reports which were determined acceptable by the respective Inspectors and the various restrictions on the use of the tower cranes were lifted.

17. For example, as it relates to Riverton, the professional engineering report provided by Lee of Magna-Tech stated the following:

> **SUBJECT: INSPECTION OF PECCO TOWER CRANE**
>
> Following your instructions on June 20, 2008 from Riverton Forming Inc., Magna-Tech NDT Services visited the construction site on 275 King Street East on the East Lofts Inc. in Toronto ON for the purpose of visually examining the Pecco SK225 Tower Crane Serial No. 1001 due to the order given by MOL.
>
> **INSPECTION RESULTS:**
>
> **The crane structure and the components were visually examined by Magna-Tech NDT Services in accordance with the Ontario Regulations Section 213/91, 159 (1, a & b, 2, 3, & 4,) under Occupational Health and Safety Act,** for physical damage and that the components are in proper working order. The tower sections - 14 indications were found on six separate tower sections as marked at the time of our inspection visit, **boom sections**-it is recommended that a lifeline be installed, connections to turntable, apex section, turntable section, and counter jib a large opening was found unguarded and it is recommended that a handrail system: is to be installed where the **counter jib** section and the turntable section meet/connect, and also both hoist and trolley cables were examined and there were broken wires found in the **trolley cable** at the time of our inspection visit, this cable to be replaced. The components are in proper working order and all limit switches are in proper working order.
>
> **All above mentioned indications were repaired and found acceptable by MT.**
>
> **Magna-Tech NDT Services feels that the above mentioned crane is in proper working order in accordance with manufacturer's recommendations and CSA standard and provided that above mentioned crane is operated in accordance with manufacturer recommendations, CSA Standard, and within the limits of the cranes set limits the crane is unlikely to endanger a worker.**

> **IMPORTANT NOTE:**
>
> **If for any reason the above mentioned unit in this report is subject to any type of overloading directly or indirectly this report shall be considered void of all certification and a full examination of the unit for recertification must be completed.**
>
> The operator he/she must perform their daily checks **in accordance with manufacturer recommendations** and CSA Standard on the equipment prior to operation on a daily basis.

Michael Burrell

18. Mr. Michael Burrell ("Burrell") has been a Professional Engineer since 1976 and is one of the principals of Burrell & Associates. Burrell testified that his engineering firm is involved with issues concerning the structure of cranes, their cabling and mechanical components. The firm employs three (3) professional engineers who are involved with tower crane work. One such engineer is Ambrozy. Approximately 25% of the company's work involves tower cranes.

19. Burrell testified that prior to the three (3) cases involving Hardwall, Aviance and Riverton, his company had never received any complaints or concerns from clients or the Ministry of Labour concerning the content of professional engineer reports his firm has provided and which were required as a result of an Inspector's Order made pursuant to the OHSA. He indicated that his firm has never used words like "safe to operate" or "not likely to endanger".

20. In Burrell's opinion, tower cranes are inherently dangerous. Cranes are a piece of equipment that can endanger a worker depending on whether operators have the appropriate skill level and training. It also depends on people following safety rules, workers not being negligent in the performance of their duties and proper inspections taking place.

21. Burrell testified that he did not like the implications that might flow from using a phrase like "not likely to endanger". He indicated the problem with using such language is that it opens Burrell & Associates up to potential liability if there was a subsequent accident. In his view, requiring his firm to use such language was, in effect, being asked to guarantee the crane. Mr. Burrell indicated he had made inquiries with the Ontario Society of Professional Engineers and the Society seemed to agree with him that this is not the type of statement an engineer should make. Likewise, Burrell expressed concern that making such a statement could place his insurance at risk. Professional engineers must have insurance in order to practice in their chosen profession. Burrell testified that he could not get a definitive answer from his engineering firm's insurer as to whether using the phrase "not likely to endanger" would be viewed as a guarantee, such that, the insurer could take the position that Burrell & Associates had overstepped their professional bounds by making a blanket statement not based in fact.

22. As a professional engineer, Burrell testified he was governed by the *Professional Engineers Act*, R.S.O. 1990, c P.28.("PEA"). In this regard, General Regulation 941, R.R.O. 1990 to the PEA establishes a Code of Ethics. Also, a professional engineer must also take a course on ethics before becoming licenced. The Code of Ethics makes it clear that a professional engineer, who holds a licence or a certificate of authorization, has a duty to the public to act at all

times with fidelity to public needs and that the professional engineer's duty to public welfare is paramount.

23. Burrell testified that, in his opinion, his duty to the public includes a duty to workers, as workers are a subset of the term public. As such, when his engineering firm uses words in a professional engineers report, to the effect that, "a crane can go back into use", that should be sufficient. In his view, given a professional engineer's duty to the public, if a professional engineer was aware of a hazard or danger to a crane that engineer could not allow the crane to operate.

24. In cross-examination, Burrell indicated he could not think of one piece of equipment that was not inherently dangerous and admitted his concern with inserting the words "not likely to endanger a worker" is a legal concern not a philosophical one. Using such words is "a big risk" in his opinion, however, he admitted he has never sought any legal advice on the issue. Further, he was of the opinion that it would not be practical for an engineer's report to contain a disclaimer or qualifications as there would be too many.

Bernard Ennis

25. Lastly, Mr. Bernard Ennis ("Ennis"), who is employed by the Professional Engineers Ontario ("PEO"), was called by the applicants to give evidence in these matters. Mr. Ennis testified that Burrell had contacted the PEO with respect to the issue of professional engineering reports ordered by Ministry of Labour Inspectors requiring the phrase "not likely to endanger a worker".

26. Ennis indicated that the PEO has a Professional Standards Committee that provides advice to the Council of the PEO on practice matters and standards that regulate engineering practices. The Committee also provides guidelines on recommended practices. This Committee also has the authority to deal with issues of professional misconduct and discipline of professional engineers that breach the PEA and its Regulations. Ennis testified that one of the concerns the PEO has with Inspectors requiring the precise words "not likely to endanger", is what impact the use of that specific phrase may have on professional engineers' insurance coverage. Ennis confirmed Burrell's testimony that the PEA requires professional engineers to carry insurance. In this regard, the PEO was concerned as to whether the inclusion of the phrase "not likely to endanger" could be characterized as a professional engineer giving an absolute assurance or absolute guarantee, such that it could negatively affect the ability of a professional engineer to maintain insurance coverage. Ennis indicated that the PEO's President and CEO, its Registrar and its legal counsel, had written a letter to the Deputy Minister of Labour about this issue, however, this letter and its content was not tendered into evidence.

27. Ennis testified that the PEO also has committees and working groups that are struck from time to time to deal with changes to legislation. In this regard, Ennis confirmed no committee or working group had been struck to deal with the issue raised by Burrell & Associates. In response to the question as to whether the PEO was advising engineers not to issue an engineering report that contains the precise words "not likely to endanger" as set out in s. 54 (1)(k) OHSA, he testified that if it came up he believed the PEO would advise against it, however, he could not recall if it has come up since. Ennis, however, did recall that the PEO did have a published guideline pertaining to the issue of certification and how it was not a good practice for engineers to certify or otherwise provide guarantees.

The Position of the Parties

The Applicants

28. It is the common position of all the applicants in these four (4) applications that once the written reports by Burrell & Associates were provided to the various Inspectors the applicants had complied with s. 54(1)(k) of the OHSA and the Inspectors should have lifted any and all restrictions concerning the operation of the applicable tower cranes.

29. The applicants argue that the various Inspectors have taken an unduly narrow and literal interpretation of the Act, by requiring the precise words "not likely to endanger a worker", be in a professional engineers report, pursuant to section 54(l)(k) of the OHSA. It is argued that by requiring the precise words, in the face of an engineering report that otherwise states the crane can go back into operation, the Inspectors are superseding the judgment of a professional engineer. The Inspectors are ignoring the expert opinion of the professional engineer and this results in the Inspector exceeding his or her jurisdiction and acting without lawful authority.

30. The applicants submit that it is clear from the language of s. 54(1)(k) of the Act that the intent of the Legislature was to clearly put in the hands of professional engineers, not Inspectors, the determination as to whether equipment, machinery or devices are safe to operate. How that determination or evaluation is ultimately expressed by a professional engineer should not be restricted so as to mandate the inclusion of an exact or precise phrase. Further, given the professional engineer's paramount duty to the public welfare, a professional engineer's report that states a piece of equipment, machine or device can go back into operation, in effect, is stating that the equipment, machine or device, is not likely to endanger.

31. The applicants rely on the Board's decision in *Edvac Contracting Ltd. and Universal Workers Union, Local 183,* [2006] OLRB Rep. Jan/Feb 20, to support their position that it is the intent of the Legislature to have professional engineers make the determination or evaluation of equipment, machinery or devices, pursuant to 54(1)(k), and not Ministry Inspectors. In *Edvac Contracting Ltd., supra,* the Board found it was unnecessary for the Inspector to specifically direct the employer to have equipment, machinery or devices tested by a professional engineer. In ordering the employer to provide a report from a professional engineer, the Board interpreted s. 54(1)(k) of the Act, as necessarily including any required testing. The Board also found that the testing required was a matter to be determined by the engineer and not the Inspector or the employer.

32. By way of analogy to the result in *Edvac Contracting Ltd., supra,* the applicants argue if an Inspector cannot tell a professional engineer what testing is required, pursuant to s. 54(1)(k), an Inspector should not be able to dictate what the report must state. The Inspector should defer to the judgment of the professional engineer when that engineer has determined the equipment, machine or device can go back into operation.

33. When a professional engineer has investigated the matter; performed the required testing necessitated by the events that have given rise to a stop work order; has addressed in the report the conditions which resulted in the stop work order; and has made an evaluation that the affected equipment, machine or device can resume operation, there is no longer a basis for the Inspector to believe there is a hazard or danger to a worker. As such, the applicants assert that, in the present appeals, the various Orders that restricted the use of the tower cranes should have

been lifted by the Inspectors at the time the Inspectors were each presented with written reports from a professional engineer that stated the crane, in effect, could resume operation.

34. The applicants submit that the change in practice and the Inspector's narrow interpretation of the Act to support that practice, namely, requiring professional engineers to use the precise words of "not likely to endanger a worker", facilitates the shutdown of workplaces in Ontario; brings delays and significant costs; precludes knowledgeable engineering firms like Burrell & Associates from being retained; and is an interpretation of s. 54(1)(k) that does not facilitate the purpose or objectives of the OHSA.

The Position of Ministry of Labour (Inspectors) and the Operating Engineers

35. The Operating Engineers and the Ministry of Labour, on behalf of the Inspectors, argue that the Inspector's Orders, pursuant to s. 54(1)(k) of the Act, required nothing more than strict compliance with the legislation. The precise wording of "not likely to endanger a worker", is taken directly from s. 54(1)(k) of the OHSA. In this regard, it is a general principle of statutory interpretation that the Legislature intends to use the wording it has used and for the specific purpose the words direct. The language of s. 54(1)(k) of the Act is neither ambiguous nor confusing. It has been part of the necessary lexicon of occupational health and safety in Ontario for a considerable period of time. As such, the applicants, or more accurately, the professional engineers engaged by the applicants, are not free to seek a method of compliance which does not conform to the OHSA's requirements. It is argued that the Board should not second guess the clear intent of the Legislature in using the precise language dictated by s. 54(1)(k) of the Act and suggest some other alternative wording is acceptable.

36. The Ministry and the Operating Engineers agree with the applicants that the language of s. 54(1)(k) does indicate an intention by the Legislature to place in the competent hands of professional engineers, as opposed to Inspectors who may not be engineers, the assessment or evaluation of equipment, machinery or devices. However, it is also clear that the Legislature intended the professional engineer, in his or her report, to render an opinion as to whether the tested equipment, machine or device is "not likely to endanger a worker". In fact, the clear language of s. 54(1)(k) makes it readily apparent that the Legislature did not want interpretation issues and differences of opinion to arise between an Inspector and the professional engineer over whether the wording in a report gives the "green light" and has, in fact, determined the equipment, machine or device is not likely to endanger a worker. The Legislature did not want debate or speculation by an Inspector as to what is meant by the content of a professional engineer's report. That is why the Legislature clearly obligates the professional engineer, based on testing done and his or her expertise, to evaluate and make an assessment based on a standard that forms part of the common lexicon of the OHSA, namely, "not likely to endanger".

37. The Operating Engineers and the Ministry submit that the words "not likely to endanger", "likely to endanger", "may endanger", are common within the OHSA and its Regulations, in various applications different than that of this appeal (e.g. s. 54(1)(n), 43(6), 43(8) of OHSA; Construction Regulations, O.Reg. 213/91, s. 93(1), 93(2)(b), 101(1), 234(2)(h); Mining Regulations O. Reg. 854 – s. 91 and 96(1)). Further, it is important to note that s. 54(1)(k) of the Act is a provision of general application that can apply to construction, diving, mining or industrial settings, not just tower cranes. The Ministry and the Operating Engineers assert that when evaluating the evidence the Board should have no difficulty in finding that there is no evidence of a general reluctance by professional engineers, across all sectors and industries, to provide written reports that can comply with the express wording of s. 54(1)(k) of the Act. In

fact, even the construction employers in these applications eventually received written reports from a professional engineer that stated the applicable tower crane was unlikely to endanger a worker. It is submitted that there is no evidence that there are young inexperienced professional engineers rushing to give negligent opinions in written reports. There is no evidence that using the precise words of "not likely to endanger" has had any negative impact on an engineer's insurance coverage nor does the PEO prohibit its members from using such a phrase. Even if the evidence had been that the PEO and its committees had issued guidelines to its members not to use the phrase "not likely to endanger", the Operating Engineers and the Ministry point to section 2(2) of the OHSA which states **"Despite anything in any general or special Act, the provisions of this Act and the regulations prevail".** [emphasis added]

38. As it concerns the issue of the stop work orders or the other orders that restricted the use of the tower cranes in these applications, the Operating Engineers and the Ministry submit that where there has been an order to comply with s. 54(1)(k) of the Act and that order has not been complied with, an employer remains in contravention of a provision of the Act. As a result, it is not unreasonable for an Inspector in the exercise of the Inspector's discretion, to take the position that in the absence of a written report that states that the crane is "not likely to endanger", a potential danger or hazard continues to persist. As such, an Inspector does not need to lift the stop work order or lift the no-use restriction as there remains a contravention of the Act, namely, s. 54(1)(k) has not been complied with. .

The Position of the Carpenters and LIUNA, Local 183

39. Both the Carpenters and LIUNA, Local 183 took no position as to what is the proper interpretation of section 54(1)(k) of the OHSA and also took no position as to the ultimate outcome the Board should reach as it concerns these four (4) applications.

Legal Analysis and Decision

40. The OHSA provides Inspectors with very broad powers to examine and determine the safety of a workplace. An Inspector is free to inspect and free to discuss any questions or concerns with workers. Inspectors have the authority to make inspection-related inquiries of any person in the workplace. Inspectors can compel the production of drawings, specifications, licences, documents, records or reports. As can be ascertained from the words of section 54(1)(k) of the Act, as Inspector may demand an employer, at the employer's expense, provide a signed and sealed report of a professional engineer as it concerns affected equipment, machinery or devices. The authority to require such a report is an important tool an Inspector has at his or her disposal to assist the Inspector in determining the safety of a workplace.

41. Section 54(1)(k) of the Act is a provision of general application. It is applicable to various sectors such as construction, mining or industrial. The interpretation to be given to 54(1)(k) of the Act does not just impact on tower cranes but has wide application to many different sectors and industries. Other than the *Edvac Contracting* decision, *supra,* the parties were unable to provide the Board with any other previously decided cases in which section 54(1)(k) of the Act was interpreted. The Board, however, does note that the phrase "not likely to endanger" and such other similar phrases as, "likely to endanger", "may endanger", are used elsewhere in the Act and its regulations. For example, section 54(1)(n) requires an owner of a mine to provide a report of a professional engineer stating that "the ground stability of, the mining methods and the support or rock reinforcement used in the mine or part thereof is such

that a worker **is not likely to be endangered"**. Similarly, in the context of a worker's right to refuse unsafe work s. 43(3)(a) of the Act states that a worker may refuse to work, or do particular work were he or she has reason to believe that "(a) any equipment, machine, device or thing the worker is to use or operate **is likely to endanger himself or another worker"**. Likewise, section 43(8) of the Act indicates that in a work refusal scenario, it is the role of the Inspector, following an investigation, to "decide whether the machine, device, thing or the workplace, or part thereof **is likely to endanger the worker or another person".** [emphasis added]

42. Surrounding provisions to 54(1)(k) of the Act, as well as other relevant provisions, such as sections 43(3)(a) and 43(8) of the Act, can and should be considered by the Board to assist it in properly reading section 54(1)(k) in context. In the context of Inspectors deciding work refusals, the Board has commented on the meaning of the phrase "likely to endanger" found in s. 43(8) of the Act. In *Ontario(Ministry of Solicitor General and Correctional Services),* [1998] O.O.H.S.A.D. No. 201 (QL) (OLRB), the Board stated the following concerning s. 43(8) of the Act:

> **175.** Unfortunately, there has been little said heretofore on the meaning of 'likely to endanger'. The most cited case is KUT-KWICK MOWER (May 10, 1985, Glasberg). Director of Appeals Glasberg wrote:
>
> > It will be useful at this stage to determine what precisely is meant by the term "likely to endanger" in section 23(8) of the Act. I have received some help in interpreting this phrase from the case KEANEY v. BRITISH RAILWAY BOARD (1961) 2 All E.R. 532 (C.A.). At page 543 of this decision, Wynn L.J. deals with the interpretation of the phrase "likely to arise" in the following manner:
> >
> > The difficulty is to ascertain the meaning and effect of the condition 'likely to arise'. Clearly it is not satisfied where there is no more than a possibility of danger or in circumstances where the occurrence of danger would be wholly abnormal or due to some extraneous fortuitous occurrence.
> >
> > In my view, therefore, the term "likely to endanger himself or another worker" necessarily implies the test of probability.
> >
> > What meaning can we then give to word "endanger". This issue was dealt with in the case of RE EASTERN STEELCASING AND UNITED STEEL WORKERS, LOCAL 379 (1981), 28 L.A.C. (2nd) 310. There, the arbitrator suggested that the term "endanger", as used in section 23 [now 43] of the Act, means "a significant danger, beyond the normal hazards of the job". In my view, in its ordinary and natural meaning, the word "danger" connotes a substantial risk which may involve life or injury to the person or to health.
>
> **176** Put simply, the test seems to involve two elements. First, the word "likely" suggests that there is some probability that a danger will arise. This test obviously requires something more than its mere possibility. The second element requires, in addition, that there be a substantial risk to a worker's health and safety. In addition, I would have thought that one would be

> required to balance the two elements against one another, i.e. less likely but more serious consequences or highly likely but no substantial risk.

43. *Re Kunz,* [1988] O.O.H.S.A.D. No. 15, (QL) also involved a work refusal in which, the Director of Appeals commented on section 23(8) of the Act [now section 43(8)], and stated:

> 9. The scheme of section 23 is to allow a worker or workers to refuse work in certain circumstances until the likelihood of endangerment is investigated by a Ministry of Labour inspector. Under section 23(8) the inspector is required to make a decision as follows:
>
> 23(8) The inspector shall, following the investigation referred to in subsection (7), decide whether the machine, device, thing or the work place or part thereof is likely to endanger the worker or another person.
>
> …
>
> 14. …The fact that this decision cannot always be made with absolute certainty is reflected in the use of the word "likely" in the phrase "likely to endanger".
>
> 24. The decision of the inspector does not purport to be absolute. It is only a finding that the work place is not "likely" to endanger the worker. As such, it implies judgement, and that judgement must be understood to be based on the best knowledge available at the time.

44. The interpretation given to s. 43(8) of the Act, in *Re Kunz, supra*, and *Ontario (Ministry of Solicitor General and Correctional Services) supra*, I find helpful and persuasive. In my view, the word "likely", in the context of section 54(1)(k) of the OHSA, suggests that there is some probability that a danger will arise. This obviously requires something more than a mere possibility. It is also my view that the word "endanger" in s. 54(1)(k), requires there to be a substantial risk to a worker's heath and safety. In the context of s. 54(1)(k) the envisioned assessment or evaluation by the professional engineer of the equipment, machine or device, does not purport to be an absolute. It is only an evaluation or assessment that the equipment machine or device is not "likely" to endanger the worker. As such, it implies judgement, and that judgement must be understood to be based on the testing done, and best knowledge available to the professional engineer at that particular point in time.

Principles of Statutory Interpretation and the Interpretation of s. 54(1)(k) of the OHSA

45. Section 54(1)(k) of the Act states:

> **54.** (1) An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations,
>
> …
>
> (k) **require in writing** an employer to have equipment, machinery or devices tested, at the expense of the employer, by a professional engineer and to provide, at the expense of the employer, **a report bearing the seal and signature of the professional engineer stating**

> **that the equipment, machine or device is not likely to endanger a worker;** [emphasis added]

46. These four (4) applications essentially involve an exercise in statutory interpretation. The basic principles of such interpretation which apply are not in dispute between the parties and, in fact, are set out by the Board in the *Edvac Contracting* decision, *supra*, at paragraph 17 as follows:

> 17. When the Board interprets the Act it must use the purposive approach adopted by the Supreme Court of Canada. This approach differs from an older approach to statutory interpretation that sought to give every word in a statute a distinct meaning. In *Rizzo & Rizzo Shoes Ltd. (Re:)*, 1998 CanLII 837 (S.C.C.), (1998), 154 D.L.R. (4th) 193, the Supreme Court of Canada discussed the current approach to statutory interpretation and stated as follows:
>
>> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.
>
> Further, the Board recognizes that the *Occupational Health and Safety Act*, is remedial legislation which establishes minimum standards for the protection of health and safety of workers. As a result, a narrow or technical interpretation of the Act that frustrates the purpose of the Act is to be avoided. (See: *Ontario (Ministry of Labour) v. Hamilton (City)* [2002] O.J. No. 283 (Ont. C.A.).

47. In the *Edvac Contracting* decision, *supra,* at paragraphs 20-22, the Board made the following comments concerning section 54(1)(k) of the Act:

> 20. The Board is satisfied that the proper interpretation of section 54(1)(k) is that a direction to provide a report encompasses the requirement to conduct testing. Section 54(1)(k) refers to testing **and** a report, not testing or a report. Further, after a professional engineer tests the equipment, a report from **the** professional engineer stating that the device is not likely to endanger a worker is required by this section. [emphasis added]. In other words, under section 54(1)(k) the Inspector is not presented with three distinct options (i.e. to direct the employer to test or to provide a report or to both test and provide a report). Instead, in view of the use of the word "and" (as opposed to "or") combined with the requirement to provide a report "of the professional engineer" (as opposed to "of a professional engineer") the most logical interpretation of section 54(1)(k) is that it authorizes the Inspector to direct the company to provide a report from the professional engineer confirming that the equipment is not likely to endanger a worker and, to the extent it is necessary in order for the professional engineer to issue such a report, the employer is directed to have the professional engineer test the equipment, with the cost of both the report and any required testing borne by the employer.
>
> 21. Such an interpretation of section 54(1)(k) is also the most practical interpretation of this provision. What testing, if any, is necessary in order for the professional engineer to provide his report and state that the device or

> equipment is not likely to endanger a worker is a matter to be determined by that professional engineer and not by either the Inspector or the employer. Accordingly, when the company was directed, pursuant to section 54(1)(k), to provide a report, the company was also being directed to perform those tests that were necessary for the professional engineer to issue his report. Accordingly, it was unnecessary for the Inspector to specifically direct the company to have the equipment or device tested by the professional engineer.
>
> 22. Section 54(1)(l) permits an Inspector to direct that a device or equipment not be used pending "testing described in section (k)". There is no doubt that the use of the word testing in this manner is ambiguous. However, given the Board's interpretation of section 54(1)(k) above, the Board is satisfied that when the Inspector exercised his discretion under section 54(1)(k) and directed the company to obtain a report from a professional engineer, the Inspector was authorized, under section 54(1)(l) of the Act, to direct the company not to use the equipment pending completion of the tests that were required in order for the professional engineer to provide the report contemplated in section 54(1)(k). The fact that section (l) refers solely to testing may simply be designed to ensure that the state of the equipment will be preserved pending completion of the test(s) so that the report reflects the state of the equipment as it existed at the time the Order was issued.

48. While the Board's interpretation of section 54(1)(k), in the *Edvac Contracting* decision, *supra,* was in the context of testing and not directly on all fours with the context of the present applications, it is still interesting to note that the Board, albeit in *obiter*, had no hesitation in making the following statements:

> **"Further, after a professional engineer tests the equipment, a report from the professional engineer stating that the device is not likely to endanger a worker is required by this section."**
>
> "the most logical interpretation of section 54(1)(k) is that **it authorizes the Inspector to direct the company to provide a report from the professional engineer confirming that the equipment is not likely to endanger a worker** and, to the extent it is necessary in order for the professional engineer to issue such a report, the employer is directed to have the professional engineer test the equipment, with the cost of both the report and any required testing borne by the employer."

49. The Board finds that the language of section 54(1)(k) of the OHSA is neither ambiguous nor confusing. The Board agrees with the general principle of statutory interpretation that the Legislature intended to use the wording it has used and for the specific purpose the words direct. In this regard, the express wording of section 54(1)(k) requires the employer provide, at the expense of the employer, a written report bearing the seal and signature of the professional engineer stating that the equipment, machine or device is not likely to endanger a worker. The precise wording of section 54(1)(k) does not easily lend itself to an interpretation that the professional engineer's written report is allowed to state other conclusions, such as the equipment, machine, or device, "can likely go back into operation", or make general statements such as "the turntable bolts are suitable" or "the crane is ok to operate in third gear", without going on to clearly state an opinion as to the likelihood of danger that crane poses to a worker.

50. The requirement to use "not likely to endanger a worker", that is found in the express wording of the Orders made by the various Inspectors in these applications, is taken directly from the express wording used by the Legislature when it enacted section 54(1)(k) of the OHSA itself. The Board will not presume to second guess the intent of the Legislature in using this precise language and suggest that some other alternative wording is acceptable.

51. The Board finds that the precise language of section 54(1)(k) reflects the clear intent of the Legislature as it concerns this provision, as well as, the precise language accords with the scheme or object of the Act. The Board agrees with the parties that the precise language of section 54(1)(k) makes it clear that the Legislature selected the professional engineer as the person most qualified to test and report on affected equipment, machinery or devices. The Board's decision in *Edvac Contracting, supra,* supports this interpretation. The professional engineer's education, knowledge, skill and training in the technical subject matters that would necessarily be involved in testing and evaluating affected equipment, machinery or devices, makes it easy to understand why the Legislature would place the public welfare in the hands of such a qualified individual. Likewise, the precise words of section 54(1)(k) also reflect the intention, on the part of the Legislature, that the professional engineer in his or her written report is obligated by the Act to provide a written assessment, based on a commonly understood standard as to whether the affected equipment, machinery or device "is not likely to endanger a worker".

52. Another stage of the analysis the Board must turn its mind to is to consider how a purposive interpretation of the statutory language used might also inform the interpretation of section 54(1)(k). In other words, would interpreting section 54(1)(k) in a way that did not require the professional engineer to use the precise words, "is not likely to endanger a worker", do anything to advance the purpose of the legislation.

53. Once again, the purpose of the OHSA is to guarantee a minimum level of health and safety for the protection of workers in Ontario. The applicants argue that an interpretation of section 54(1)(k) of the Act that does not require a professional engineer to use the precise words does advance that purpose. Specifically, and arguing in the contrary, the applicants argue that by insisting on the precise words of "not likely to endanger a worker", health and safety may be compromised as less experienced professional engineers, who are willing to sign off on such language, may be used so that stop work orders can be lifted. Likewise, the insistence on the inclusion of the precise words may put in jeopardy a professional engineer's insurance coverage and hence their licence to practice. Likewise, the applicants assert that insisting on the precise words facilitates the shutdown of workplaces in Ontario; brings delays and significant costs; precludes expert engineering firms, like Burrell & Associates, from being retained; all of which does not facilitate the purpose or objectives of the OHSA.

54. The applicants assert that given the professional engineer's paramount duty to the public welfare, use of the precise words "not likely to endanger" is not necessary once a professional engineer has provided an opinion that confirms affected equipment, machinery or devices can go back into service.

55. The Board finds that the above rationale or grounds, relied on by the applicants as to why the purpose of the legislation is not met by mandating the use of the precise words, are not supported by the evidence nor are they persuasive. The Board agrees with the position of the Ministry and the Operating Engineers and finds there is no evidence of a general reluctance by professional engineers to provide written reports that comply with the express wording of s.

54(1)(k) of the Act. In fact, all of the construction employers in these applications eventually received written reports from a professional engineer that stated the various tower cranes were unlikely to endanger a worker. There is no evidence that there are young inexperienced professional engineers rushing to give negligent opinions in written reports. In fact, section 31(2) of the Act, specifically states that a professional engineer contravenes the Act if a worker is placed in danger as a result of negligent or incompetent advice given by a professional engineer. There is no evidence that the use of the precise words "not likely to endanger" has had any negative impact on an engineer's insurance coverage nor does the PEO specifically prohibit its members from using such a phrase. Even if the evidence was such that the PEO and its committees had issued guidelines to its members not to use the phrase "not likely to endanger" the Operating Engineers and the Ministry correctly point to subsection 2(2) of the OHSA which states "**Despite anything in any general or special Act, the provisions of this Act and the regulations prevail**". [emphasis added]

56. The Board finds that the precise words of s. 54(1)(k) do not create an absolute guarantee. Rather, the precise words require an assessment, by someone perceived by our society to be an expert, on the basis of a commonly understood standard of whether it is more likely than not the affected equipment, machinery or devices, at a particular point in time, pose a substantial risk to the health and safety of a worker. I do not find persuasive the argument advanced by the applicants that, given an engineer's duty to the public a written report that uses words that indicate the crane can go back into uses equates to "not likely to endanger". If Burrell, as his testimony seems to indicate, truly believes that a report that states a crane can be operated means the professional engineer is not aware of a hazard or danger to that crane, then that professional engineer should have no hesitation to use the precise words "not likely to endanger a worker".

57. The Board also does not find persuasive the grounds of cost and workplace shutdowns advanced by the applicants. These grounds are the natural consequences of complying with the law. There will always be a monetary cost and disruption to bear in situations where an Inspector has issued a stop work order or otherwise restricted the use of equipment, machinery or devices. This is done in furtherance of the purpose of the Act. There are obviously costs associated with having a professional engineer test and write a report but these costs are clearly envisioned by the Act and are clearly envisioned to be borne by the employer. Likewise , whether the Ministry of Labour has changed its practice concerning the precise language required in a professional engineer's report pursuant to s. 54(1)(k), is immaterial if the precise language of the statute requires it. The Board has long recognized that an estoppel cannot operate to prevent the operation of a public statute (see *Culliton Brothers Limited,* [1982] OLRB Rep. March 357; *Ontario Power Generation Inc.,* [2001] O.L.R.D. No. 1943 (QL) (May 14, 2001)).

58. Based on the above analysis, I am satisfied that the plain and ordinary language in section 54(1)(k) of the Act, when read in context and in light of the broad and remedial nature of the Act as a whole, requires a professional engineer, in rendering his or her opinion, to expressly state in the written report whether the affected equipment, machine or device is or is not likely to endanger a worker. Specific reference to the precise words used in the statutory provision facilitates consistency of assessment and minimizes the opportunity for confusion or debate by an Inspector as to what conclusion should be reached based on the content of a report. Having a certain level of consistency in the content of reports, by requiring all professional engineers to use the precise words envisioned by the Legislature, helps create a common benchmark of evaluation, which enhances and, in all likelihood, may even expedite the Inspector's ultimate determination as to the safety of the workplace.

59. Given the above interpretation of s. 54(1)(k) of the Act, the Board finds that the four (4) construction contractors in these applications were not in compliance with the respective Inspector Orders when they tendered the various reports of Ambrozy of Burrell & Associates. As such, the Board dismisses this aspect of the applicants' appeals.

STOP WORK ORDERS AND/OR OTHER ORDERS RESTRICTING USE

60. As previously identified at paragraph 33 of this decision, it is the position of the applicants, that even if s. 54(1)(k) required the use of the precise language "not likely to endanger a worker", there was no longer a basis for the Inspectors to believe there remained a hazard or danger to the health and safety of the worker given the content of the reports from Burrell & Associates. As such, the applicants assert that in the present appeals the various Orders that restricted the use of the tower cranes should have been lifted by the Inspectors at the time they were each presented with a written report from a professional engineer that stated the crane could go back into service.

61. The Operating Engineers and the Ministry submit that when there has been an order to comply with s. 54(1)(k) of the Act and that order has not been complied with, an employer remains in contravention of a provision of the Act. As a result, it is not unreasonable for an Inspector, in the exercise of the Inspector's discretion, to take the position that in the absence of a written report that states that the crane is "not likely to endanger", a potential danger or hazard persists.

62. In the fact scenario involving Hardwall, the Inspector attended the job site due to a reported incident in which a concrete bucket being lowered to the ground via a hoist operated by a tower crane operator tipped over and spilled on the ground. Order #3, of the various orders of the Inspector identified that malfunctioning controls were a danger or hazard to the health and safety of workers and issued a stop work order, pursuant to section 57(6)(b) of the Act. The Inspector also issued Order #2, which required, pursuant to s. 54(1)(k), the report of a professional engineer stating the crane is not likely to endanger a worker.

63. Section 57(1) and 57(6)(b) of the Act are as follows:

> **57.** (1) Where an inspector finds that a provision of this Act or the regulations is being contravened, the inspector may order, orally or in writing, the owner, constructor, licensee, employer, or person whom he or she believes to be in charge of a workplace or the person whom the inspector believes to be the contravener to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies.
>
> **57.**(6) Where an inspector makes an order under section (1) and finds that the contravention of this Act or the regulations is a danger or hazard to the health or safety of a worker, the inspector may,
>
> > (b) order that the work at the workplace as indicated in the order shall stop until the order to stop work is withdrawn or cancelled by an inspector after an inspection;

64. On June 12, 2008, Hardwall received two (2) reports from Ambrozy of Burrell & Associates. Neither of these reports used the precise words that the tower crane was "not likely to endanger a worker". On June 13, 2008, the Inspector returned to the project to check compliance with the outstanding orders. The Inspector issued a Premise/Project Form that stated Orders 1, 4, 5, 6, 7, 8 had been complied with but that Orders 2 and 3 had not been complied with. The Inspector also stated the following:

> Professional engineer has indicated that a problem with power supply may have been a contributing factor in the crane failure and recommended that voltage and current monitors be installed. These have not been installed.
>
> P. Eng.'s report for crane does not state that the Pecco Tower crane s/n# 1402 will not likely endanger a worker. A copy of the report has been taken and will be forwarded to the MOL engineers for review. Stop work order still in effect. The employer may wish to explore other professional engineers or appeal the order.

65. At the time the Inspector was given the reports of Ambrozy, the evidence discloses that a provision of the Act continued to be contravened. In particular, section 54(1)(k) remained contravened as the professional engineering reports did not state the crane was "not likely to endanger a worker". The Inspector also notes that Ambrozy had recommended that voltage and current monitors be installed and this has not yet taken place. The Board therefore finds that the conditions that prevailed at the job site, at the time of the Ambrozy reports, reveal ongoing concerns that a danger or hazard persisted and this was more than mere conjecture. As a result, the Inspector exercised his discretion not to lift the stop work order #3, as he believed, and the Board so finds, that a danger or hazard to the health or safety of a worker remained. The Board sees nothing improper with how the Inspector exercised his discretion in this matter. The Board is of the view that it is not unreasonable for an Inspector to conclude that if a professional engineer's report does not state the equipment, machine or device, in this case a tower crane, is "not likely to endanger a worker", a danger or hazard persists.

66. In the fact scenario involving Aviance, the restriction on the use of the tower crane flowed from sections 93(2) O. Reg. 213/91 and 54(1)(l) of the Act. In the case of Riverton, the restriction on the use of the tower crane was based on sections 54(1)(l), 57(6)(b) of the Act and 93(2)(a) of O. Reg. 213/91, which are as follows:

> **93.** (1) All vehicles, machinery, tools and equipment shall be maintained in a condition that does not endanger a worker. O. Reg. 213/91, s. 93 (1).
>
> (2) No vehicle, machine, tool or equipment shall be used,
> (a) while it is defective or hazardous;
> (b) when the weather or other conditions are such that its use is likely to endanger a worker; or
> (c) while it is being repaired or serviced, unless the repair or servicing requires that it be operated. O. Reg. 213/91, s. 93 (2); O. Reg. 145/00, s. 25 (1).
>
> **54.** (1) An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations,

> . . .
>
> (l) require in writing that any equipment, machinery or device not be used pending testing described in clause (k);
>
> **57(6)(b) for the wording of this section please refer to paragraph 63 of this decision.**

67. In the Aviance matter Order #1 of the Inspector, dated June 25, 2008 stated:

> 93(2) The Kodiak Tower Crane KL 140 s/n 001 shall not be used while it is defective or hazardous. Observed a crack on the turn table of the crane on the north side of the lower turn table section. The crane shall not be operated until the crack is investigated and repaired. Observed sections of the turntable platform just below the turntable have been cut out below the bolts. These are not in the operator's manual. Observed cutouts in the top horizontal members of the mast at the turntable section. These are not in the operator's manual.

68. The evidence also discloses, and the Board so finds, that on June 27, 2008 the Inspector returned to the project and issued two additional orders in relation to the KL 140 Tower Crane. Order 1 was made pursuant to s. 54(1)(k) and Order 2 was made pursuant to 54(1)(l). On June 27, 2008 the Inspector reviewed the professional engineer reports of Ambrozy dated June 26, 2008 and June 27, 2008. The Inspector re-inspected the KL 140 Tower Crane and stated the following in his June 27, 2008 Narrative:

> Upon inspection of the Kodiak KL-140 tower crane s/n 001 erected on the northwest corner of the project and review of the manual for the crane, the following has been determined:
>
> 1. The crane manual provided is not specific for this crane but it is for Kodiak cranes.
>
> 2. The crane manual provided states that the tower crane coarse threaded bolts are to be changed every 3 years. The mechanic states that the bolts in the turntable bearing section of the crane are coarse threaded bolts. There is no record of when these bolts have been changed but has not been within 3 years, as records exist for the past 3 years.
>
> 3. There is no record that the turntable bearing bolts have been non destructively tested at anytime as required by regulation.
>
> 4. There is no objective criterion stated in the June 27, 2008 report from Burrell & Associates Inc. defining the meaning of in very good condition when referencing the turntable bearing bolts.
>
> 5. There is no long term maintenance records for this crane and no records for the weld repairs to the crane that include what type of electrode was used to complete the repair.
>
> 6. The June 27, 2008 report from Burrell & Associates Inc. recommends that the new bolts be installed when the employer receives them.

> As such, if the employer wishes to operate the tower crane at this time prior to the installation of the new slewing gear bolts, they must provide a written report signed and sealed by a professional engineer stating that the Kodiak KL 140 tower crane s/n 001 is not likely to endanger a worker. Reference should be made to the criteria used to make this statement and the limitations of the statement can be listed. Reference can be made to CSA standard 7248 Tower cranes.
>
> Unless this statement is forthcoming, the crane cannot be operated for productive work on the project unless suitable bolts are installed in and around the turntable mechanism.

69. Based on the Inspector's Narrative of June 27, 2008, the Board finds that a number of the underlying conditions which gave rise to the Inspector's Orders #1 and 2 on June 25, 2008, regarding the KL 140 Tower Crane had not been resolved. Conditions involving cutouts to the turntable and these not being in the operator's manual; not having an operator's manual specific to the KL 140 crane; as well as no record for the non-destructive testing of the bolts, are all identified by the Inspector in his June 27, 2008 Narrative. Given these outstanding issues, and the fact that the engineering reports did not state the crane was not likely to endanger a worker, the Board sees no basis for overturning the June 25th Orders #1 and #2 on the sole basis that the Inspector had been given the two professional engineering reports of Ambrozy dated June 26, 2008 and June 27, 2008. The Board finds that the Inspector properly exercised his discretion when he made the determination on June 27, 2008, that the KL 140 Tower Crane remained defective or hazardous. As such, there is no evidentiary basis for this Board to conclude the Inspector erred by not lifting his June 25, 2008 Orders #1 and 2.

70. The agreed to the evidence also discloses, and the Board so finds, that on June 27, 2008, the Inspector made additional orders pursuant to s. 54(1)(k) and 54(1)(l) of the Act. Section 54(1)(l) restricted the use of the KL 140 tower crane, in that, the crane was to be used pending the testing that was to take place pursuant to s. 54(1)(k) of the Act. The Inspector was not provided with a further professional engineer's report until July 3, 2008, which was the report by Lee of Magna Tech, which stated the crane "is unlikely to endanger a worker". The Inspector reviewed the report and lifted all Orders to the KL 140 Tower Crane. Based on these facts, the Board sees no basis to find that the Inspector improperly exercised his discretion nor any other evidentiary basis for the Board to conclude that the restrictions on the use of the crane should have been lifted prior to the July 3, 2008 date.

71. Riverton's appeal of Order #4 involves s. 54(1)(l) of the Act. Order #4 indicated the SK 225 tower crane was not to be used pending the testing envisioned as a result of the requested s. 54(1)(k) report. In evaluating the applicant's position that Order #4 should have been lifted once Ambrozy's report had been given to the Inspector, it is important to note that the inspection, which took place on June 11, 2008, also resulted in other orders being issued, specifically Order #5, pursuant to s. 93(2)(a) which stated:

> Ensure that no vehicle, machine, tool or equipment shall be used, while it is defective or hazardous.
>
> Attention to the tower crane Peiner SK 225 Serial Number 100 who burrell and associates created a report on May 26, 2008 for, stating that the second gear had a sheered key.

In addition, Order #6, pursuant to s. 57(6)(b) was issued which stated:

> The above contravention is a danger or hazard to the health and safety of worker(s) employed in, or having access to this workplace, use of Tower Crane Peiner SK 225 Serial Number 1001 at this workplace as indicated in the above order shall stop until the order to stop work is withdrawn or cancelled by an inspector after an inspection.

72. In its application Riverton does not appeal the stop work order (s. 57(6)(b)) or the non-use restriction placed on the tower crane pursuant to section 93(2)(a) of the regulations. Given that Riverton did not appeal Orders #5 and #6 of the Inspector, dated June 11, 2008, the issue as to whether the Inspector should have lifted his "no-use" restriction, pursuant to s. 54(1)(l), upon receipt of Ambrozy's June 12, 2008 report, is rendered moot as the tower crane would have still remained out of service due to Orders #5 and 6, which have not been appealed.

Conclusion

73. For all the reasons stated above, I conclude that all four (4) of these appeals must fail. As a result, all four (4) applications are hereby dismissed.

APPENDIX

OLRB File Numbers:
1065-08-H S - Hardwall Construction Ltd.
1232-08-HS -Aviance Forming Ltd.
142-08-HS - Riverton Forming Inc.

ONTARIO LABOUR RELATIONS BOARD

BETWEEN:

HARDWALL CONSTRUCTION LTD.
AVIANCE FORMING LTD.
RIVERTON FORMING INC.

Appellants

-and-

NEIL MARTIN and GUY COSTA
(MINISTRY OF LABOUR FOR ONTARIO)

Respondents

AGREED STATEMENT OF FACTS

1. The parties herein have agreed to the following facts of the case for the purpose of the hearing into the three above noted appeals under section 61 of the Occupational Health and Safety Act, R.S.O. 1990, c.O.1 ("OHSA").

HARDWALL CONSTRUCTION LIMITED

A. ORDERS UNDER APPEAL

1. On June 9, 2008, Ministry of Labour ("MOL") Inspector Neil Martin ("Martin") issued eight Orders to Hardwall Construction in relation to an incident involving a Tower Crane operated by Hardwall Construction on a project located at 450 Lakeshore Boulevard West in Toronto.

2. Hardwall Construction appealed Order 2 and 3 issued under section 54(1)(k) and 57(6)(b) of the OHSA.

3. Order 2 on the Premise/Project Form stated:

> 54.(1) An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations,
>
> > (k) require in writing an employer to have equipment, machinery or devices tested, at the expense of the employer, by a professional engineer and to provide, at the expense of the employer, a report bearing the seal and signature of the professional engineer stating that the equipment, machine or device is not likely to endanger a worker;

4. Order 3 on the Premise/Project Form stated:

> 57. (6) Where an inspector makes an order under section (1) and finds that the contravention of this Act or the regulations is a danger or hazard to the health or safety of a worker, the inspector may,
>
> > (b) order that the work at the workplace as indicated in the order shall stop until the order to stop work is withdrawn or cancelled by an inspector after an inspection;

Exhibit "A" - Premise/Project Form (P/P ID - 1346060, FV No. 5526723)

THE EVENTS

5. Hardwall was a sub-contractor on a residential condominium project located at 450 Lakeshore Boulevard West in Toronto.

6. Ellis Don Corporation was the Constructor of the project.

7. Hardwall rented a Pecco SN 1200 tower crane from Dell Core Equipment Limited ("Dell Core") for use and operation at the project.

8. Laboratory tests and inspection of the steel wire rope on the Pecco SN 1200 crane used at the project, was conducted on January 22, 2008. Tests indicated the rope was in satisfactory condition.

Exhibit "B"-Certificate of Inspection, Steel Wire Rope

9. On May 30, 2008, Ambrozy conducted a magnetic particle inspection of the Pecco PC 1200 crane. The inspection was requested by Dell-Core to comply with the requirements of Section 158(1) of the Regulations for Construction Projects, 0. Reg. 213/91 ("the Regulations"). Section 158(1) states, "Before a tower crane is erected at a project, a professional engineer or a competent worker designated by a professional engineer shall inspect its structural elements and components using methods of non-destructive testing approved by the Canadian Government Specifications Board to determine their structural integrity." Ambrozy's May 30, 2008 report indicated that no defects were found.

Exhibit "C"-May 30, 2008 Magnetic Particle Inspection Report

10. The crane was delivered to the project on June 1, 2008

11. The crane was erected on June 3, 2008 by Tower Crane Erectors Limited in accordance with manufacturer and engineering specifications.

Exhibit "D"-Tower crane Erection Report.

12. On June 3, 2008 the crane was inspected for structural defects as required by section 159(1)(a)(b) of the Regulations which states, "A professional engineer or a competent worker designated by a professional engineer shall visually inspect for defects the structural elements and components of a tower crane, (a) after the crane is erected and before it is used and (b) after the inspection under section (a) at intervals not greater than twelve months." Ambrozy conducted the visual inspection. According to Ambrozy's report, no structural defects were found in any member of the crane structure.

Exhibit "E"-June 3, 2008 Crane Inspection by Ambrozy.

13. On June 9, 2008 Ellis Don Corporation reported an incident, in which a concrete bucket being lowered to the ground via a hoist operated by the Pecco 1200 Tower Crane operator tipped over and spilled concrete on the ground, to the Ministry of Labour. Nobody was injured as a result of this incident. Hardwall Construction initiated an investigation of the incident. As a result of the investigation, the crane was re-inspected and checked by Dell-Core Service Technicians before being placed back into service.

Exhibit "F"-Investigation Reports and Service Report

14. On June 9, 2008 Ministry of Labour Inspector Martin attended the project to investigate the incident. After inspecting the crane and interviewing witnesses, Martin issued eight orders, including two Stop Work Orders. Order 2 required that Hardwall provide a report from a professional engineer stating that the Crane "is not likely to endanger a worker". Order 3 stopped the crane from being operated. In his narrative on page 5 of the Premise/Project Form, Martin said, "the crane is not to be operated for productive work until the report has been received by the MOL and the order is lifted by the inspector."

15. To comply with Orders 2 and 3, Hardwall Construction retained professional engineer R.J. Ambrozy P. Eng. ("Ambrozy") of Burrell &

Associates Incorporated ("Burrell & Associates") on June 11, 2008 to inspect the Tower Crane.

Exhibit "G"-Ambrozy's Resume and Qualifications as a Professional Engineer

16. On June 12, 2008, Ambrozy provided an engineering report to Hardwall Construction based on his June 11, 2008 inspection of the Tower Crane. Ambrozy's report documented that electrical contactors activated when hoisting was replaced, the wiring between the control panel and the operators control box was replaced, the hoist cable was replaced and a load test was witnessed to conform that the moment overload switch and the line pull limit switch were working. Ambrozy's report stated that, "the crane was tested by operating all the controls a number of times. During the testing the crane behaved in the expected manner...at the time of our inspection the crane was operating normally and in our opinion can be placed back into service."

Exhibit "H"-June 12, 2008 Crane Inspection Report by Ambrozy

17. On June 12, 2008 Ambrozy issued a subsequent report which stated that magnetic particle inspection was done on the crane bolts, the pendant bar connections, welds on the crane tower and other areas as deemed necessary during Ambrozy's June 11, 2008 inspection of the tower crane.

Exhibit "I"-June 12, 2008 Subsequent Report by Ambrozy Re: Magnetic Particle Inspection

18. On June 13, 2008, Inspector Martin returned to the project to check compliance with outstanding orders. Inspector Martin issued a Premise/Project Form. The form states: Order 1, 4,5,6,7,8 complied with; and Order 2 and 3 not complied with. According to Inspector Martin, Ambrozy's June 12, 2008 report did not comply with the requirements of Order 2 and 3 because the report did not use the specific phrase, "not likely to endanger a worker.' Martin took a copy of Ambrozy's report for his records and forwarded a copy of the report to "MOL Engineers" for review and consultation. Inspector Martin rejected the engineering report and did not lift the Stop Work Order.

Exhibit 'J"-Premise/Project Form (P/P ID - 1346060. FV No. 5526739)

19. On June 14, 2008, a meeting was arranged with Inspector Martin, Ambrozy, a representative from the Professional Engineers of Ontario, Mr. Bernard Ennis ("Ennis") and representatives from Hardwall Construction. The purpose of the meeting was to discuss Ambrozy's June 12, 2008 engineering report in the context of Orders 2 and 3 as issued by Inspector Martin on June 9, 2008. As confirmed by Hardwall Construction, Ambrozy and Ennis explained that the June 12 2008 engineering report provided by Ambrozy met the requirement of section 54(1)(k). As confirmed by Hardwall Construction, Inspector Martin maintained his position that the June 12, 2008 report did not meet the exact language of section 54(1)(k) of the OHSA. Martin refused to lift the Stop Work Order and the crane remained out of use.

20. On June 18, 2008, Hardwall Construction retained Dennis B.C. Lee P.Eng. ("Lee"), at its own expense, a professional engineer from Magna-Tech NDT Services have Orders 2 and 3 lifted by Inspector Martin. Mr. Lee visually examined the crane. A magnetic particle inspection of the crane was not performed.

21. On June 19, 2008, Lee provided Hardwall with a report documenting his visual inspection of the crane. The report stated, "Magna-Tech NDT Services feels that the above mentioned crane is in proper working order in accordance with manufacturer's recommendations and CSA standard...and within the limits of the cranes set limits the crane is unlikely to endanger a worker."

22. On June 20, 2008, Hardwall Construction provided Lee's report to Inspector Martin. Inspector Martin told Hardwall Construction that the Stop Work Order was lifted. However, it was not until June 23, 2008. Inspector Martin visited the project to check compliance with outstanding the Orders. Inspector Martin provided written confirmation (Premise/Project Form) to Hardwall Construction that all Orders were lifted on the crane on June 20, 2008.

> Exhibit "K"-Premise/Project Form (PIP ID - 1346060, FV No. 5526746)

AVIANCE FORMING LIMITED

A. ORDERS UNDER APPEAL

1. On June 25, 2008, Inspector Martin attended a project located at 29 Bremner Boulevard in Toronto to investigate an alleged complaint about two Kodiak Cranes (KL-140 and KL-250). While at the project, Martin issued eleven Orders to Aviance Forming in relation to the two Kodiak Cranes.

> Exhibit "L"-Premise/Project Form (PIP ID - 1260481, FV No. 5526748)

2. Orders 1 to 2 pertained to the KL-140 tower crane and Orders 3 to 11 pertained to the KL-250 tower crane. Orders 4 and 11 were Stop Work Orders. Martin ordered that work on both cranes be stopped until he lifted the Orders.

3. Aviance Forming appealed Order 1 and 2 issued under section 93(2) and 158(1) of the Regulations.

4. Order 1 on the June 25, 2008 Premise/Project Form stated:

> 93(2) The Kodiak Tower Crane KLI4O s/n 001 shall not be used while it is defective or hazardous. Observed a crack on the turn table of the crane on the north side of the lower turn table section. The crane shall not be operated until the crack is investigated and repaired. Observed sections of the turntable platform just below the turntable have been cut out below the bolts. These are not in the operator's manual. Observed cutouts in the top horizontal members of the mast at the turntable section. These are not in the operator's manual.

5. Order 2 on the June 25, 2008 Premise/Project Form stated:

> 158(1) Before a tower crane is erected at a project, a professional engineer or a competent worker designated by a professional engineer shall inspect its structural elements and components using methods of non-destructive testing approved by the Canadian General Standards Board to determine their structural integrity. The turntable bolts have not been non-destructively tested on the Kodiak KL 140 s/n 001.

6. On June 27, 2008, Inspector Martin returned to the project and issued two additional Orders to Aviance Forming in relation to the KL 140Tower Crane.

> Exhibit "M"-Premise/Project Form (PIP ID - 1260481, FV No. 5526751)

7. Aviance Forming appealed Order 1 and 2 issued under section 54(1)(k) and 54(1)(l) of the OHSA.

8. Order 1 on the June 27, 2008 Premise/Project Form stated:

> 54(1)(k) An inspector may, for the purposes of carrying out his or her duties and powers under this act and the regulations, require in writing an employer to have equipment, machinery or other devices tested, at the expense of the employer, by a professional engineer and to provide, at the expense of the employer, a report bearing the seal and signature of the professional engineer stating that the Kodak KL 140 tower crane s/n 001 on the project is not likely to endanger a worker.

9. Order 2 on the June 27, 2008 Premise/Project From stated:

> 54(1)(l) An inspector may, for the purposes of carrying out his or her duties and powers under this act and the regulations, require in writing that the Kodak KL 140 tower crane s/n 001 on the project not be used pending testing described.

B THE EVENTS

10. Aviance Forming was a sub-contractor on an office, retail and condominium project located at 29 Bremner Boulevard in Toronto.

11. PCL Constructors was the General Contractor on the project.

12. Aviance Forming employed 130 workers on the project, including carpenters, labourers, supervisors, field operators and crane operators. There were four crane operators and two apprentice crane operators on the project.

13. There were four Tower cranes operated at the project by Aviance Forming. Two of the cranes were Kodiak cranes (KL-140 and KL-250).

14. Crane operators were responsible for inspecting cranes on a daily basis. Operators document their inspections on a Tower Crane Log.

Exhibit "N"-Tower Crane Log

15. On June 25, 2008, Inspector Martin attended the project to investigate an alleged anonymous complaint about two Kodiak cranes (KL-140 and KL-250). Martin issued 11 Orders (Orders 1 to 2 pertained to KL-140 Crane and Orders 3 to 11 pertained to KL-250 Crane).

16. On June 25, 2008, to comply with Orders 1 and 2 Aviance Forming retained a professional engineer, Ambrozy, to inspect the structural elements and components of the KL-140 Crane and provide an engineering report. Inspector Martin did not require an engineering report for the KL-250 Crane (Orders 3 to 11).

17. On June 25, 2008, Ambrozy inspected the KL 140 Tower Crane. Based on his inspection, Ambrozy provided Aviance Forming with a report dated June 26, 2008. The report stated, ". . . our inspection was done visually using a high strength magnifying glass on the cracks mentioned on the turntable of the crane no indication of any cracks were found on the turntable mentioned in the stop work order, the rust on the edge of the weld could have been mistaken as an indication of a crack. The cut-out is used for access to the bolts and to be able to weld complete joint penetration. The notch on the cut out is not affecting the structural integrity of the turntable.., all of the turntable bolts were retorqued as per manufacturer's specification by Aviance service personnel."

Exhibit "O"-.-June 26, 2008 Engineering Report from Ambrozy

18. On June 26, 2008, Inspector Martin returned to the project and lifted Stop Work Orders 4 and 11 in relation to substantive Orders 3, 5, 6, 7, 8, 9, and 10, in regards to the KL250 Tower Crane. Order 1 and 2 for the KL 140 Tower Crane remained in effect and Aviance Forming remained unable to operate the KL 140 Tower Crane.

19. On June 27, 2008, Ambrozy issued a follow-up engineering report to Aviance Forming that clarified and provided additional information related to his June 25, 2008 inspection of the KL 140 Tower Crane. Ambrozy's subsequent report stated, ". .the service mechanic checked the torque on the turntable bearing bolts and found them acceptable. Two bolts were removed for inspection, the service mechanic confirmed that the bolts were in very good condition with no rust and still had the original bolt bearing lubrication.., we were informed by Aviance Forming that new turntable bolts are on order and should arrive in the next few weeks.., we believe that the existing turntable bolts are still suitable for the operation of the crane until the new bolts are installed."

Exhibit "P"-June 27, 2008 Engineering Report from Ambrozy

20. Inspector Martin returned to the project on June 27, 2008 to review Ambrozy's June 26, 2008 and June 27, 2008 engineering reports with Aviance Forming. Inspector Martin re-inspected the KL 140 Tower Crane. Inspector Martin was not satisfied with the engineering reports and Order 1 and 2 remained in effect. Inspector Martin's narrative on the June 27, 2008 Premise/Project Form stated, "if the employer wishes to operate the tower crane at this time prior to the installation of the new slewing gear bolts, they

must provide a written report signed and sealed by a professional engineer stating that the Kodiak KL-140 tower crane s/n 001 is not likely to endanger a worker.. .unless this statement is forthcoming, the crane cannot be operated for productive work on the project until new suitable bolts are installed in and around the turntable mechanism". Inspector Martin issued two additional Orders on June 27, 2008. Order 1 required Aviance Forming to provide an engineering report that stated, "crane not likely to endanger a worker." Order 2 stopped Aviance from operating the crane.

21. Aviance Forming contacted Ambrozy's professional engineering firm, Burrell and Associates and was told by Burrell and Associates that they were not prepared to issue a subsequent report with the specific phrase, "not likely to endanger a worker."

22. On July 2, 2008, to secure Inspector Martin's consent to lift Orders 1 and 2 on the June 27, 2008 Premise/Project Form, Aviance Forming retained Lee from Magna-Tech NDT Services, at its own expense. Lee visually inspected the crane and provided Aviance with a report specifically stating, "the crane is unlikely to endanger a worker..."

> Exhibit "Q"-July 2, 2008 Engineering Report from Lee

23. On July 3, 2008, Inspector Martin reviewed Lee's report and lifted all Orders that pertained to the KL-140 Crane because it used the specific language in s. 54(1)(k) of the OHSA.

> Exhibit "R"-July 3, 2008 Premise/Project Form (PIP ID - 1260481, FV No. 5526754)

RIVERTON FORMING INCORPORATED

A. ORDERS UNDER APPEAL

1. On June 11, 2008, Inspector Guy Costa ("Costa") attended a project located at 275 King Street East in Toronto to conduct an inspection of Tower Crane SK 225. Costa issued five Orders, including one Stop Work Order. All of the Orders pertained to the Tower Crane.

> Exhibit "S"-June 11, 2008 Premise/Project Form (PIP ID - 1332911, FV No. 6034635

2. Riverton appealed Order 3 and 4 issued under section 54(1)(k) and 54(1)(l) of the OHSA.

3. Order 3 on the June 11, 2008 Premise/Project Form stated:

> 54(1)(k) An inspector may, for the purposes of carrying out his or her duties and powers under this act and the regulations, require in writing an employer to have equipment, machinery or other devices tested, at the expense of the employer, by a professional engineer and to provide, at the expense of the employer, a report bearing the seal and signature of the professional engineer stating that the Kodak KL 140 tower crane s/n 001 on the project is not likely to endanger a worker.

4. Order 4 on the June 11, 2008 Premise/Project From stated:

> 54(1)(l) An inspector may, for the purposes of carrying out his or her duties and powers under this act and the regulations, require in writing that the Kodak KL 140 tower crane s/n 001 on the project not be used pending testing described.

B. THE EVENTS

5. Riverton was a sub-contractor on a residential construction project located at 275 King Street East in Toronto.

6. East Lofts Incorporated was the Constructor of the project.

7. On May 26, 2008, Riverton retained professional engineer Ambrozy to inspect Tower Crane SK225 to determine if it was operating safely after a service mechanic had changed the crane to operate the hoist in the third gear and had disconnected the mechanical gear shifting mechanism. These adjustments were made to prevent the crane operator from operating the crane in the second gear, which had a sheered key. Ambrozy provided an engineering report to Riverton based on his inspection of the crane. Ambrozy did not report any concerns or problems with the crane.

Exhibit "T"-May 26, 2008 Engineering Report from Ambrozy

8. On June 10, 2008, Ambrozy returned to the project to re-inspect the Tower Crane as stated in his May 26, 2008 report. After his inspection Ambrozy provided a second engineering report to Riverton based on his re-inspection of the Tower Crane. Ambrozy did not report any concerns or problems with the crane.

Exhibit "U"-June 10, 2008 Engineering Report from Ambrozy

9. On June 11, 2008, Inspector Costa attended the project to conduct a routine inspection of Tower Crane SK 225. During the MOL inspection Riverton provided Costa with Ambrozy's two engineering reports (May 26, 2008 and June 10, 2008) verifying the Tower Crane was safe to operate. After inspecting the crane and reviewing the engineering reports, Costa issued five orders. Order 3 required Riverton to provide Costa with an engineering report that stated the crane was "not likely to endanger a worker."

10. On June 11, 2008, to comply with Order 3, Riverton retained Ambrozy a third time to inspect the Tower Crane. Ambrozy re-inspected the crane.

11. On June 12, 2008, Ambrozy provided Riverton with an engineering report based on his June 11, 2008 inspection of the crane. The report stated, "the crane capacity in third gear is adequate for the intended loads on this project... the gearbox in my opinion can be used in third gear in accordance with the manufacturer's load chart."

Exhibit "V"-June 12, 2008 Engineering Report from Ambrozy

12. According to Inspector Costa, Ambrozy's June 12, 2008 report did not comply with the requirements of Order 3. The Stop Work Order remained in effect and the crane remained out of use.

> 13. Riverton contacted Burrell and Associates Incorporated a fourth time and were told by Ambrozy that the report provided on June 12, 2008 met the requirement of section 54(1)(k) of the OHSA and that their firm was not prepared to issue a subsequent report with the phrase, "not likely to endanger a worker," as required by Inspector Costa.
>
> 14. Inspector Costa did not lift the Stop Work Order.
>
> 15. On June 26, 2008, Riverton retained Lee, from Magna-Tech NDT Services. Lee provided Riverton with a report stating, "the crane is unlikely to endanger a worker."
>
> Exhibit "W"-June 26, 2008 Engineering Report from Lee
>
> 16. According to Riverton, they provided Lee's report to Costa and the Stop Work Order was lifted.
>
> **ALL OF WHICH IS RESPECTFULLY SUBMITTED AS AGREED FACT.**

0893-10-ES Just Energy Corp., Applicant v. Baldeesh (Lisa) Dhillon and Director of Employment Standards, Responding Parties

Employment Standards – The employer applied to review an Employment Standards Officer's order for compensation for violation of the post-pregnancy reinstatement provisions – The employer led evidence to show that it was bound by the settlement of other litigation to eliminate the complainant's position – The Board held that the Act does not require the termination of another person's employment in order to comply with the obligation to reinstate to comparable employment – The Act is designed to protect employees on leave, not to provide greater rights to employees who go on leave than to other employees – Application allowed; order rescinded

BEFORE: *Brian McLean*, Vice-Chair.

APPEARANCES: *Thomas A. Stefanik, Richard Early, Jason Herod, Sean Podnar*, and *Richard Teixeira* appeared for the applicant; *Ellen A. S. Low* and *Baldesch (Lisa) Dhillon* appeared for the responding party; no one appeared for the Director of Employment Standards.

DECISION OF THE BOARD: May 19, 2011

1. This is an application for review by an employer of an Order to Pay issued by an employment standards officer. The Board held a hearing on March 21, 2011 to receive the parties' evidence and arguments regarding the application.

2. The primary issue in this application is whether the employer complied with its obligation under the Employment Standards Act to reinstate its former employee, the responding

party Ms. Dhillon, to her job following her return from pregnancy/parental leave. The facts are not substantially in dispute.

3. The employer is a company which sells energy contracts (or "solutions" as it refers to them) to various industrial, commercial and residential clients. The company generates sales by engaging "contractors" to go door to door. The company has operations in both the United States and Canada, although its head office is in Ontario.

4. Ms. Dhillon was hired by the company in 2006 as a "Sales Specialist". Later her title was changed to Regional Sales Manager. At the time her employment was terminated in July, 2009 (while she was on pregnancy/parental leave) she earned $45,000/year.

5. While employed for the applicant, Ms. Dhillon managed a sales territory. Her job was to provide support and strategic direction to the various offices in her region of responsibility. The company had five sales regions: the Midwest (Illinois and Indiana), New York (the North East States), Texas, Ontario and Western Canada.

6. Ms. Dhillon's primary sales region of responsibility was the Midwest. During her time with the company she also supported the company's office in Buffalo, New York for a brief spell.

7. In 2008, Ms. Dhillon requested a pregnancy/parental leave. The leave was granted without issue commencing on August 1, 2008 and Ms. Dhillon went on leave.

8. On or about June 23, 2008 (prior to Ms. Dhillon's leave) the company hired Humera Siddiqui as a permanent full-time employee. The employer's witness Richard Teixeira gave evidence that Ms. Siddiqui was hired for two purposes. First, she was to fill Ms. Dhillon's role as Midwest Sales Manager while Ms. Dhillon was on leave. Second, following Ms. Dhillon's return from leave, Ms. Siddiqui was to take over the expanding New York Region on a permanent basis. The New York Region at the time of Ms. Siddiqui's hire was being managed by another employee, John Hibbard who was slated to move to the company's Houston office.

9. Although the details were somewhat sketchy, it appears the company ran into significant legal issues in Illinois while Ms. Dhillon was on leave. The end result of a lawsuit brought against the company by the State of Illinois was a settlement (made into a Court Order) which required the company to hire a local manager in Illinois. Since Illinois was a significant aspect of Ms. Dhillon's responsibility (more than ½), the company believed it had no choice but to eliminate Ms. Dhillon's job and replace her with an Illinois manager who could cover her whole territory. Dan Brown was hired in mid May 2009 to be the new Midwest Sales manager based in Illinois. At the time of Mr. Brown's hire Ms. Siddiqui was assigned the role she had been hired for – Sales Manager for New York Region. As a result, the company, by letter dated July 23, 2009, advised Ms. Dhillon that her employment was terminated effective August 29, 2009.

[sic]9. Ms. Dhillon filed a complaint with the Employment Standards Branch of the Ministry of Labour. The officer charged with investigating her complaint found that the employer had violated the Act and made an Order to Pay in the amount of $37, 458.92. This is the employer's appeal from that order.

Decision

10. The relevant statutory provisions are as follows:

> **53.** (1) Upon the conclusion of an employee's leave under this Part, the employer shall reinstate the employee to the position the employee most recently held with the employer, if it still exists, or to a comparable position, if it does not.
>
> (2) Subsection (1) does not apply if the employment of the employee is ended solely for reasons unrelated to the leave.
>
> (3) The employer shall pay a reinstated employee at a rate that is equal to the greater of,
>
> (a) the rate that the employee most recently earned with the employer; and
>
> (b) the rate that the employee would be earning had he or she worked throughout the leave.

11. The essence of the employer's argument is that Ms. Dhillon's position was eliminated as a result of the events in Illinois. There was no comparable position available and the employer was under no obligation to either create a comparable job or to terminate the employment of someone occupying a comparable job. On this last point, the employer argues that Ms. Siddiqui, although hired after Ms. Dhillon, was, before Ms. Dhillon went on leave, hired to cover the New York Region and therefore her position is secure from Ms. Dhillon's claim.

12. The essence of Ms. Dhillon's argument is that she was entitled to Ms. Siddiqui's job since Ms. Siddiqui was hired after her, in part to fill her position while she was on leave.

13. This is a difficult case. Ms. Dhillon went on leave fully expecting to return to her employment after the leave period. Unfortunately, the events in Illinois, over which the employer had no real control, eliminated Ms. Dhillon's position as a practical matter.

14. The employer could have offered Ms. Dhillon the position in Illinois. The Court's Order clearly required the company to "hire and thereafter maintain managerial personnel in Illinois …" not that an Illinois resident be hired to the position. However, there is no suggestion Ms. Dhillon wanted (or wants) the Illinois position or would have accepted it if offered.

15. The employer could also have given Ms. Dhillon the New York Sales Manager position. It is clearly a comparable position, one which Ms. Dhillon had experience in handling. However, Ms. Siddiqui was already in the job when Ms. Dhillon's leave was to expire and was hired for the New York job some months previously. By the time the events in Illinois took place Ms. Siddiqui had been working for the company for several months. Plus, putting Ms. Dhillon in that position would have meant terminating Ms. Siddiqui's employment in circumstances where Ms. Siddiqui was hired to fill a position other than Ms. Dhillon's.

16. In my view the Act does not require the termination of another person's employment in order to comply with the obligation to reinstate to comparable alternate employment unless the individual was hired only to replace the person on leave.

17. The Act is designed to protect employees on leave, not to provide greater rights to employees who go on leave than to other employees. This is the reason behind s.53(2) as Referee Muir stated in *Ontario Blue Cross (Re)* [1994] O.E.S.A.D. No. 203 with respect to the Act's equivalent predecessor section.

> In my view the question boils down to this - is it open to the Employer to effect a bone fides termination of an employee who has taken a pregnancy or parental leave or is the right to reinstatement absolute as argued by the Claimant such that the Employer must reinstate for an indeterminate period even where it had established that the employee would have been terminated had the leave not occurred? For the reasons set out below I do not believe that the language of Part XI goes so far. In my view the scheme taken as a whole is meant to limit the economic consequences of childbirth and adoption by creating a mandatory right to a leave and then reinstatement to the former position etc. The scheme does not create an absolute right to a job for everyone who has taken a leave under the Part.

The Board came to a similar conclusion in *David & David* [2004] OLRB Rep. July/August 692.

18. While these foregoing decisions concern the reinstatement to the employee's pre-leave position, in my view the analysis applies equally to the employer's obligation to reinstate to a comparable position.

19. Of course, an employer's decision that it does not have comparable employment must be scrutinized carefully. This is particularly the case where, as here, the employer has hired a replacement for the employee on leave and the replacement retains her employment while the employee on leave does not. In this case; after careful scrutiny I am satisfied that Ms. Siddiqui was hired to fill the New York Region position and occupied that position following the events in Illinois and the hiring of Mr. Brown. There was therefore no comparable position for Ms. Dhillon to go to when she completed her leave.

20. Accordingly, for all of the reasons the application is allowed and the Order to Pay is rescinded.

1531-10-ES Ontario Line Clearing & Tree Services Limited o/a Ontario Line Clearing & Tree Service, Applicant v. Gyula Bognar and Director of Employment Standards, Responding Parties

Employment Standards – The employer sought review of an order for wages and compensation, the employment standards officer having found that the employee was entitled to overtime and was victim of a reprisal – The evidence revealed that the employee and his co-workers were dissatisfied with their wage rate and working conditions, and staged a work

refusal to demand their rectification – The Board was persuaded that no overtime was owing to the employees – The Board held further that engaging in (or orchestrating) a work stoppage was wilful misconduct or wilful neglect of duty, and not an exercise of rights under the Act – Application allowed; orders rescinded

BEFORE: *Patrick Kelly*, Vice-Chair.

APPEARANCES: *William Wharram* and *Jonathan McNairn* appearing for the applicant; *Gyula Bognar* and *Ian Klem* appearing on behalf of Gyula Bognar; no one appearing for the Director of Employment Standards.

DECISION OF THE BOARD: May 19, 2011

1. This is an employer application under the *Employment Standards Act, 2000,* S.O. 2000, c.41, as amended (the "Act") for review of Orders to Pay No. 80002239-OP and No. 80002240-CR.

Background

2. The Employment Standards Officer ("the Officer") determined that the responding party, Gyula Bognar ("Mr. Bognar" or "the claimant") was entitled to be paid overtime for work performed and to compensation as the result of a reprisal. The reprisal is said to have taken the form of Mr. Bognar's termination following his participation with other employees in a work stoppage. In this appeal, the applicant takes the position that Mr. Bognar was paid in accordance with the Act and was lawfully terminated from employment on January 25, 2010 without any form of reprisal.

The Evidence

3. William Wharram, the applicant's President, and Jonathan McNairn, Mr. Bognar's supervisor, testified on behalf of the company. Mr. Bognar and Ian Klem, a co-worker of Mr. Bognar's at the time of his termination, gave their evidence on behalf of the claimant.

4. Mr. Wharram acted as the company's spokesperson at the first day of hearing on January 26, 2011, and he also testified in chief. He did so in a straightforward and candid manner. Mr. Bognar declined to conduct any cross-examination of Mr. Wharram. Following his testimony, the hearing was adjourned on the consent of the parties, so as to enable the attendance of Mr. McNairn to give his evidence.

5. When the hearing resumed on March 18, 2011, only Mr. McNairn attended on behalf of the company. He testified in chief, and Mr. Bognar asked him questions in cross-examination which, to some extent, caused Mr. McNairn to change his evidence on rather key points concerning Mr. Bognar's termination, which I will describe later in the decision. In my view, this undermined the reliability of Mr. McNairn's testimony in some respects. I do not suggest Mr. McNairn was attempting to mislead the Board. On the contrary, his problem seemed to be solely related to an inability to recall the details of critical events with much clarity.

6. Mr. Bognar testified after Mr. McNairn. Mr. Bognar struck me, as did Mr. Wharram, as a forthright witness, with the capacity to recall details reasonably well. Mr. McNairn asked Mr. Bognar several questions, but they had no effect on the strength of Mr. Bognar's testimony in chief.

7. Mr. Klem testified last, almost exclusively about the circumstances that gave rise to Mr. Bognar's termination on January 25, 2010. He was not cross-examined. Mr. Klem gave his evidence in an uncomplicated manner, with candour.

8. One of the difficulties in this case is that, not only did the evidence of the applicant not align with that advanced on behalf of Mr. Bognar, but there were internal discrepancies in the testimony of the parties' own witnesses concerning the details of the work stoppage.

***

9. The applicant (or "the company") is in the business of trimming trees next to or in the vicinity of power lines for municipalities and utilities. Mr. Bognar was a tree climber employed by the company in the period from January 25, 2009 until January 25, 2010. There is a dispute between the parties as to whether Mr. Bognar's employment was continuous over that period, as contended by Mr. Bognar, or composed of several discrete contracts of employment as urged by the company.

10. Mr. Bognar ran a business of his own, providing a tree service to cottage owners. The evidence of Mr. Wharram was that Mr. Bognar was employed from January 2009 until June 26, 2009, at which point the claimant left the company for the purpose of tending to his own business. Mr. Wharram referred me to a Record of Employment issued by the company in respect of this period. It shows that Mr. Bognar's last paid day of work was June 19, 2009, not June 26, 2009; and it indicates that the reason for issuing the ROE is "Shortage of Work/End of contract or season". Mr. Bognar's evidence, on the other hand, is that some time in May 2009 he requested and was granted time off by Matthew Wharram, William Wharram's son, to make a trip to Europe from June 19 until July 13, 2009.

11. When Mr. Bognar returned from his trip the company had no work immediately available. However, on August 15, 2009 the claimant resumed working for the company on a Hydro One project in Huntsville. Mr. Bognar testified that he was promised a bonus of $1,000.00 would be forthcoming from Hydro One[1] and that his company wages would be at a higher rate for the duration of this assignment. The claimant expected this would be in the $32.00 per hour range; however, it turned out to be $23.50 per hour and an additional $100.00 to the usual meal allowance. According to Mr. Bognar, everyone on the Hydro One assignment was unhappy with their compensation. Mr. Bognar complained about it to Matthew Wharram, and after some negotiating, Matthew agreed to increase the claimant's hourly rate to $27.00, which Mr. Bognar was then paid from that point forward until the end of the assignment.

12. In the course of his testimony, William Wharram stated that, during the period of the Hydro One assignment, the claimant was instrumental in organizing a meeting with someone from the

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[1] As I understood the evidence, Hydro One routinely paid a discretionary bonus to the company's workers after the completion of assignments, so long as they were completed on time and without incident. There was no dispute that with respect to the Huntsville work, Hydro One decided not to pay any bonuses, and there is no dispute that this was the subject of some unhappiness by the company's employees.

Power Workers Union for the purpose of luring away employees of the company to Hydro One. Mr. Wharram did not provide the basis for this assertion. Mr. McNairn largely corroborated William Wharram's testimony, but again it was less than clear what was the basis for Mr. McNairn's claim that Mr. Bognar was intent upon leaving the company for Hydro One, and taking others with him.

13. For his part, Mr. Bognar denied anything to do with persuading employees to leave the company for Hydro One, or that he in fact ever indicated to anyone that he and/or others were leaving the company. He testified that the only interview he ever attended at Hydro One occurred after he was dismissed from the company in January 2010.

14. After the Huntsville assignment was completed at the end of November, Mr. Bognar was assigned by the company to work on tree-clearing for Veridian Hydro in Gravenhurst. That was followed with an assignment for ENWIN Utilities in Windsor, where the claimant worked until his termination a few weeks later.

15. On or about the morning of January 25, 2010, the employees, including Mr. Bognar, engaged in a work stoppage over the issue of compensation. It lasted about one hour. There was some dispute in the evidence concerning the precise scope of the issue that concerned the employees. William Wharram testified that, as far as he knew, based upon information provided to him that morning in a phone call from Mr. McNairn, the employees wanted to be paid more wages as well as the bonus they felt they had been promised for the Hydro One project, and that they were not going to work until those issues were addressed. He testified adamantly that the first time he ever learned that Mr. Bognar was concerned about overtime was when Mr. Bognar filed his claim with the Ministry of Labour after his termination. According to the testimony of Mr. Bognar, the employees were also concerned about fluctuations in their hourly rates from assignment to assignment and not being paid overtime. Mr. Bognar was unhappy about having to work for $19.00 per hour, when according to him the hourly rate should have been much higher for that particular type of assignment. Mr. McNairn had the impression the issues were the Hydro One bonus and meal allowances.

16. Mr. Bognar and the other employees in his crew dressed for work, but instead of heading out to their assignment they congregated in a room at the hotel. Mr. Klem testified that he ran into Mr. McNairn in the hotel parking lot, and upon being asked why he was not at work, Mr. Klem said no one was working. Mr. Klem then proceeded to go the hotel room where the employees had gathered. He testified that Mr. McNairn eventually entered the room, and the employees expressed their "opinions". Mr. Klem did not elaborate on what those opinions consisted of. Then Mr. McNairn left the room for what Mr. Klem presumed was the purpose of speaking to William or Matthew Wharram on the telephone. According to Mr. Klem, Mr. McNairn returned and told the group to go to work or face dismissal. Mr. Bognar attempted to say something, and at that point, Mr. McNairn told him that, regardless of what he wanted to say, he was to pack up his things and leave.

17. Mr. Klem's version of the confrontation with Mr. McNairn does not correspond in every detail with those of Mr. Bognar or Mr. McNairn. Mr. Bognar testified as follows. On behalf of the employees, he conveyed to Mr. Hay, the working foreman, that they wanted answers from management about their hourly rate of pay and when they could expect to be paid overtime. Mr. Bognar believes Mr. Hay conveyed that information to Mr. McNairn by telephone, but he did not overhear the conversation. When Mr. Hay returned, he told Mr. Bognar that Mr. McNairn was speaking to head office. The employees waited, and Mr. McNairn eventually entered the room,

immediately pointed to Mr. Bognar and Ivan Fredette, and said "You, you are done, pack your bags and go home". Mr. McNairn then told the remaining employees to go back to work or they too would be fired. Mr. Bognar sought clarification if he had been dismissed, and Mr. McNairn confirmed that to be the case.

18. Mr. McNairn's version was as follows. In the week prior to the work stoppage on January 25, 2010, he had received warnings from Mr. Hay that the employees were upset about the Hydro One bonus issue, and to expect to have to answer that issue at some point in the near future. On January 25, 2010, Mr. McNairn patrolled the area where the employees were supposed to be working and saw no activity. He called Mr. Hay, who informed him that the employees were sitting together in a hotel room and not going to work. Mr. Hay asked Mr. McNairn to come to the hotel and deal with the problem. In his testimony in chief, Mr. McNairn recalled that he then placed a call to either William Wharram, Matthew Wharram or both of them. Mr. McNairn remembered little of the content of this conversation – he referred to it as "a blur" - but he recalled that following the discussion he went to the hotel room and told the employees they would be dismissed if they continued to refuse to work. In cross-examination, however, Mr. McNairn agreed that he entered the room and fired Mr. Bognar and Mr. Fredette outright, and then told the employees they could expect the same if they did not start to work. He recalled further in cross-examination that the reason Mr. Bognar and Mr. Fredette were targeted was that they were suspected by the Wharrams of disloyalty in that they intended to leave the company and work for Hydro One.

19. Mr. McNairn's evidence does not correspond to the testimony of William Wharram on some aspects of their telephone call, and it does not correspond to the sequence of events surrounding Mr. McNairn's confrontation with the employees as described by Mr. Klem. Mr. Wharram recalled that he alone spoke to Mr. McNairn, and that Mr. McNairn apprised him that Mr. Bognar was acting as the spokesperson for the group of employees refusing to go out on the job (which, in fact, he was). Moreover, Mr. Wharram testified that he instructed Mr. McNairn to terminate Mr. Bognar precisely because of his alleged role as the spokesperson in the work refusal, and to warn everyone else they would face the same consequence if they continued their work stoppage. Mr. Wharram made no mention of Mr. Fredette in the course of his testimony. Mr. Wharram did refer to his suspicion that Mr. Bognar had been trying to lure employees of the company to Hydro One, but he did not say that that subject was discussed with Mr. McNairn over the phone on January 25, 2010. As I have noted, Mr. Wharram was not cross-examined, and therefore these details were never put to him.

20. Mr. Klem refused to work after Mr. McNairn issued his warning to the group of employees. As a result, Mr. Klem lost his job. It was Mr. Klem's uncontradicted evidence that two weeks later he asked William Wharram for his job back and was reinstated. Furthermore, Mr. Klem told the Board that, prior to the work stoppage, he had raised the issue of overtime with respect to a Saturday shift with Matthew Wharram and later with William Wharram. William Wharram is alleged by Mr. Klem to have said that overtime was not payable to seasonal employees like Mr. Klem, and that he should consider himself lucky to have the work.

21. The employee records produced by William Wharram during the course of his testimony, including those records involving Mr. Bognar, seem to support his contention that employees put in overtime on the Hydro One job in Huntsville and were paid for all hours exceeding 44 in a week. They also support his contention that there was no overtime worked on any other job that Mr. Bognar participated in over the span of his employment.

22. Mr. Bognar, on the other hand, testified that he and other employees had worked substantial overtime on the Huntsville job, but did not receive overtime pay. He said employees were told they would get paid overtime pay for overtime worked on the Hydro One project, and later that they were told they would not get overtime pay because they were seasonal employees. He did not explain who made these comments. He testified that he called Matthew Wharram repeatedly about this issue, and was given excuses and promises that the situation would be rectified. However, Mr. Bognar did not produce any documentation to support his claims for overtime, although he told the Board that he had kept notes of his work hours on a calendar. Nor did he give any oral evidence to show when precisely he worked overtime and was not paid premium pay.

23. Having reviewed all the evidence concerning the circumstances of the employee work stoppage, I am satisfied that the sequence of events was most probably as follows. The employees reached an understanding not to report for work on January 25, 2010 until their concerns regarding compensation were addressed by upper management. Mr. Bognar took on or was given the task of being the group's spokesperson. He communicated to Mr. Hay, the working foreman, the group's concerns about their hourly rate of pay, meal allowance, bonus and overtime. Mr. Hay asked Mr. McNairn to handle the situation. Mr. McNairn, who had been forewarned that the bonus issue was very much a subject of employee discontent, came to the hotel and heard what Mr. Bognar had to say. Mr. McNairn then excused himself from the meeting and spoke to William Wharram. He conveyed to Mr. Wharram that the employees were not working because they were dissatisfied with their wages and with Hydro One's decision not to pay a bonus. He also indicated that Mr. Bognar was the group's chief spokesperson. Mr. Wharram ordered Mr. McNairn to fire Mr. Bognar because he was the spokesperson and perceived ringleader in the work stoppage. Mr. Wharram may also have been motivated to dismiss Mr. Bognar because he believed Mr. Bognar had been influencing his co-workers to leave the company and take employment with Hydro One. In short, Mr. Wharram came to the conclusion that Mr. Bognar was a trouble-maker. He probably came to the same conclusion with respect to Mr. Fredette, whose termination I think he also probably ordered.

Analysis and Conclusions

24. The issues in this case are whether or not Mr. Bognar was the victim of a reprisal contrary to section 74 of the Act, and whether or not he worked, but was not paid appropriately for, overtime. There is also a dispute as to whether the claimant was employed continuously for approximately one year or employed on a series of short, fixed term contracts.

25. The overtime issue is relatively straightforward. Mr. Wharram testified orally that the company paid overtime when it was worked, such as on the Hydro One project. He also produced records which, on their face, appear to support that view. Mr. Bognar made no attempt to challenge Mr. Wharram directly. Nor did Mr. Bognar provide any details, orally or in writing, to show when he worked overtime, although at one time he says he kept a record. That record was not produced. Accordingly, there is no basis upon which to order the company to pay Mr. Bognar overtime pay.

26. I turn to the issue of reprisal. Section 74 of the Act states:

> **74.** (1) No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so,
>
> (a) because the employee,
>
> (i) asks the employer to comply with this Act and the regulations,
>
> (ii) makes inquiries about his or her rights under this Act,
>
> (iii) files a complaint with the Ministry under this Act,
>
> (iv) exercises or attempts to exercise a right under this Act,
>
> (v) gives information to an employment standards officer,
>
> (vi) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act,
>
> (vii) participates in proceedings respecting a by-law or proposed by-law under section 4 of the *Retail Business Holidays Act*,
>
> (viii) is or will become eligible to take a leave, intends to take a leave or takes a leave under Part XIV; or
>
> (b) because the employer is or may be required, because of a court order or garnishment, to pay to a third party an amount owing by the employer to the employee.
>
> (2) Subject to subsection 122(4), in any proceeding under this Act, the burden of proof that an employer did not contravene a provision set out in this section lies upon the employer.

27. I am satisfied that, at some point in his employment, Mr. Bognar raised concerns about his rights under the Act with Matthew Wharram. Although I have found there is no basis to support a finding that the company in fact owed Mr. Bognar overtime pay, I accept that Mr. Bognar raised issues about overtime and about his hourly rate in respect of the Hydro One assignment in Huntsville. That conflict concerning the hourly rate was resolved in Mr. Bognar's favour, but nothing came of his complaint regarding overtime. Mr. Bognar also gave some very general evidence that the employees had been promised overtime pay for overtime worked during the Hydro One assignment, but were later told they were not eligible for overtime because they were seasonal employees. He did not say who was responsible for these communications. That evidence is vague and I do not give it much weight. Mr. Bognar further testified that Matthew Wharram had indicated to the employees that Hydro One would pay a bonus, but it never materialized. That was a probably the major irritant that prompted the work stoppage. There is no evidence, however, to support that Mr. Bognar specifically raised any issue of a statutory entitlement directly with William Wharram. (Mr. Klem did so, when he complained to William Wharram about a single shift for which he did not receive overtime pay.) All of Mr. Bognar's dealings were with Matthew Wharram. Moreover, there was no evidence that William Wharram knew of Mr. Bognar's concerns when he made the decision, alone, to terminate Mr. Bognar's employment.

28. The Act exempts employers from the general requirement to give employees notice of termination or termination pay in circumstances where the employee in question engages in "wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer."[2] The withdrawal of service to an employer in pursuit of better wages or working conditions is a wilful act of commission or omission, and it is intended to cause the employer harm, or at least to cause the employer to apprehend detrimental consequences, if only temporarily. This is as true for lawful strikes sanctioned by statute, as it is for "wildcat" strikes which enjoy no legal protection and whose participants ought to know they risk their employment.

29. But for his role as spokesperson in the work stoppage, I doubt that Mr. Bognar would have been terminated. He had previously been vocal about compensation concerns but the company took no action against him. Mr. Bognar was, in my view, engaging in wilful misconduct or wilful neglect of duty or both when he decided not to report for work on January 25, 2010. So were his co-workers. The company perceived that he (and possibly Mr. Fredette) was behind the strike, and fired him as a result. In fact, there was no direct evidence that Mr. Bognar was one of the architects of the work stoppage, but regardless, that appears to have been the conclusion reached by William Wharram. Whether that was correct or not, there is no dispute that Mr. Bognar had wilfully withdrawn his service to the company in order to obtain what he believed he was entitled to in terms of wages. What he and the other employees ought to have done was continue to work and make claims under the Act, either directly to the company or by filing a claim with the Ministry of Labour. That might have afforded Mr. Bognar some protection in case of any reprisals by the company. Instead, he resorted to self-help, which exposed him to dismissal.

30. The situation in this case shares some similarities with the facts in *Velbert Limited c.o.b. as General Production Co.*, an unreported decision of Referee Rory F. Egan dated September 23, 1980. In that matter, an employee refused to continue to work unless the employer agreed to increase her pay. The foreman to whom she issued her demand had no authority to grant pay increases and told the employee to work and wait until the company's owner arrived. The employee refused to continue working, and the foreman then clocked her out on the time clock. Rather than wait for the owner, the employee left the plant. The employer dismissed her. The Referee determined that the employee was not entitled to notice of termination or termination pay in those circumstances. A similar result obtained in *Rhoads-Leonn Inc. (c.o.b. Wheatley Animal Hospital (Re)*, [1990] O.E.S.A.D. No. 196, where an employee refused to perform part of her duties (cleaning animal kennels) and also prevailed upon a co-worker to refuse to perform the work. The Referee found that exhorting the co-worker to refuse work was wilful misconduct, and the employee's own refusal to clean the kennels amounted to wilful neglect of duty, thus disentitling her to notice of termination or termination pay.

31. I find that, in engaging in a work stoppage and refusing to carry out his responsibilities, Mr. Bognar was guilty of wilful misconduct and/or wilful neglect of duty which was not trivial and not condoned. The company did not dismiss him as a result of his having exercised rights or demanded entitlements under the Act. He was terminated because he was suspected by the company to have been behind the work refusal. The act of refusing to work was sufficient to justify Mr. Bognar's dismissal without notice or termination pay. That is a factor which supports the employer's position that it did not dismiss Mr. Bognar because he asked the employer to comply with the Act or inquired about his rights under the Act or exercised or attempted to exercise a right under the Act.

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[2] See paragraph 3 of subsection 2(1), and paragraph 6 of section 9, of *O.Reg 288/01* passed pursuant to the Act.

This is not, in my view, a case where the employee's misconduct was seized upon by the employer as a pretext to punish the employee for having relied upon or asserted his statutory rights.

32. The company did not terminate the employment of many other employees who engaged in the same act of defiance as did Mr. Bognar. Their misconduct was condoned. That is probably because, rightly or wrongly, they were seen as mere followers under the leadership of Mr. Bognar. The company gave the followers a chance to redeem themselves, and effectively condoned their behaviour once it became clear they were prepared to return to work. Mr. Bognar was not afforded the same opportunity, which may seem harsh and arbitrary, but I am satisfied that it was not because of any rights he had attempted to exercise under the Act.

33. Given the disposition on the issue of reprisal and Mr. Bognar's lack of entitlement to termination pay, it is unnecessary to decide whether or not Mr. Bognar was engaged in a series of fixed term employment contracts or was employed on a continuous basis for approximately one year.

34. Orders to Pay No. 80002239-OP and No. 80002240-CR are hereby rescinded.

35. The Director of Employment Standards is directed to return all monies paid in trust to the applicant.

3015-06-G Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93, Applicant v. **Ottawa Business Interiors Ltd.**, Responding Party

Abandonment – Collective Agreement – Construction Industry Grievance – Estoppel – Remedies – To support its position that the employer was bound to the Provincial Agreement the union relied upon a collective agreement signed in 1976 – The employer argued the union had abandoned its bargaining rights and alternatively was estopped from asserting its rights given the passage of 30 years – The Board noted that while it is possible to establish abandonment of provincial bargaining rights in the ICI sector, it is well-established that it is difficult to do so, given that it requires evidence of abandonment by every affiliated bargaining agent and the employee bargaining agency – Here the period of the union's inactivity was approximately two years prior to provincial bargaining and 28 years post – While the Board found it appropriate to consider the union's conduct in the period after provincial bargaining in order to assess whether that conduct was consistent or inconsistent with an earlier abandonment of bargaining rights, the Board was not persuaded that the union's failure (given its reasonable lack of knowledge of the employer's ongoing work) to actively enforce its bargaining rights in the period after provincial bargaining was corroborative of an earlier abandonment – The evidence concerning the period prior to provincial bargaining suggested that the union remained unaware of the employer's activities and was reflective of poor quality representation, but it came short of the unequivocal evidence of the union's intention to abandon bargaining rights – Accordingly the Board found that the union had not abandoned its bargaining rights – The Board found, however, that given the union's thirty years of silence and its failure to police the collective agreement, it would be inequitable for the union to insist on adherence to the Provincial Agreement – The Board found the union was estopped from relying

upon its strict legal rights and that the estoppel comes to an end with the issuance of the Board's decision – Declaration made, grievance dismissed

BEFORE: *Caroline Rowan*, Vice-Chair.

APPEARANCES: *Melissa Kronick* and *Del Boudreau* appeared on behalf of the applicant; *Keith Burkhardt, Michael Leclair* and *Ted Short* appeared on behalf of the responding party.

DECISION OF THE BOARD: June 13, 2011

1. This is a referral of a grievance to the Board for determination under section 133 of the *Labour Relations Act, 1995,* S.O. 1995, c.1, as amended (the "Act").

2. The grievance in issue is dated October 23, 2006 (the "Grievance") and was referred to the Board on December 21, 2006. In the Grievance, the applicant, Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93 (the "Union"), alleges that the responding party, Ottawa Business Interiors Ltd. ("OBI" or the "Company"), violated the provincial collective agreement between The Carpenters' Employer Bargaining Agency (E.B.A.) and The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (C.D.C.) effective May 24, 2004 to April 30, 2007 and continuing (the "Provincial Agreement") by assigning work covered by the Provincial Agreement to persons who are not members of the union and/or to non-union subcontractors. The Grievance refers to violations of the Provincial Agreement at the Royal Ottawa Hospital project (the "Ottawa Hospital").

3. In support of its position that the responding party is bound to the Provincial Agreement, the applicant relies on a collective agreement between the applicant and OBI dated February 20, 1976 (the "Collective Agreement"). That agreement was signed by Mr. Michael B. Leclair, the Chief Executive Officer and owner of OBI, and relates to a unit of carpenters and carpenters' apprentices employed by OBI.

4. In response to the Grievance, the responding party has raised a preliminary objection to the effect that the applicant abandoned any bargaining rights it held in respect of carpenters and carpenters' apprentices employed by the responding party. In support of its position, the responding party refers to the applicant's failure to assert bargaining rights in the period after the Collective Agreement was signed on February 20, 1976 and prior to provincial bargaining; that is, prior to March 3, 1978. The responding party also relies on the applicant's continued failure to assert its alleged bargaining rights in the period after provincial bargaining as evidence corroborative of the applicant's earlier abandonment and, in this regard, relies on the decision of the Board in *Marineland of Canada Inc.*, [1990] OLRB Rep. Dec. 1298. In the alternative, the responding party contends that the applicant is estopped from asserting its rights under the Provincial Agreement given its lengthy period of inactivity from 1976, when the Collective Agreement was signed, until 2006, when the Grievance was filed.

Factual Background

5. OBI is in the business of supplying and installing office furniture. The business was started up by Mr. Leclair and his brother-in-law in 1974 and was then incorporated in 1975. When the Company started operating, Mr. Leclair sold furniture in the morning and did installations in the afternoon with a borrowed truck. In its first full year of operations in 1975, OBI earned approximately $180,000 and its annual earnings only increased thereafter. Mr. Leclair estimated that OBI earned close to $1 million between 1976 and 1978. During its first five years, it generated between $3 million and $4 million in sales and in later years had contracts in the $40 million range.

6. When Mr. Leclair signed the Collective Agreement with the Union on or about February 20, 1976, OBI was working under a contract it had with University of Ottawa to supply and install library shelving. A few days into the installation, OBI was asked by the general contractor of the University of Ottawa project to sign the Collective Agreement so that the job would not get shut down. Mr. Leclair expressed concern about the additional costs associated with using unionized carpenters and the fact that he had entered into a fixed price contract to do the installation work. The general contractor consequently agreed to pay the unionized carpenters to perform the installation work. OBI's installation work at that site was then completed over the course of two days by two unionized carpenters. They worked under the direction of one of OBI's installers, who showed them how to put the steel library shelving together.

7. OBI did not thereafter comply with the terms of the Collective Agreement or the terms of the subsequent Provincial Agreements. Rather, OBI continued to have its installation work done by its own installers, who were paid at rates determined by Mr. Leclair. At no point did OBI remit union dues or other remittances to the union for the work performed by its installers. According to Mr. Leclair's evidence, he signed the Collective Agreement with the Union one afternoon in 1976 and then "never heard hide, nor hair from anyone again". While he acknowledged that the Union's representatives never advised him that the Union was abandoning its bargaining rights, he also noted that no representatives of the Union had ever contacted him to see if he was adhering to the agreement in the 30 year period prior to the filing of the Grievance.

8. In 1976 when Mr. Leclair signed the Collective Agreement, OBI had a service department consisting of approximately three people and a total of between six and eight staff. Over the years, OBI has employed as many as sixty or seventy people and as many as twenty-seven people in its service department. In more recent years, OBI employs between twenty-eight and thirty staff in total, of which between eight and ten people work in its service department. OBI's installers have always worn uniforms marked "OBI" to the worksites. OBI also generally had approximately five trucks bearing the Company logo.

9. The evidence of Mr. Ted Short, OBI's Vice-President of Finance and Operations, and the evidence of Mr. George Dellahunt, whose role includes dispatching the installers and scheduling and who has worked for OBI since 1979, and of Mr. Leclair, all indicate that OBI performed installation of office furniture, including furniture systems, in the Ottawa area on a regular and continuous basis in the 30 year period between 1976 and 2006. The furniture installation was at times done by installers employed by OBI and, at other times, by a subcontractor to OBI. Mr. Dellahunt identified between ten and fifteen furniture installation projects performed by OBI in the 1970's and noted that many of these jobs did not involve work claimed by the Carpenters' Union, which work he

understood to be the installation of anything affixed to the wall or a floor. He also noted that in many cases there were no other trades on site when they performed their installation work.

10. During the 1980's, OBI was the largest dealer of Herman Miller furniture in Canada. OBI had a longstanding relationship with Bell Northern Telecom ("BNR") (later known as Nortel), which company leased its furniture and therefore provided the Company with a renewable resource every five or seven years. OBI worked with PCL Constructors ("PCL"), which company did the majority of BNR's work on new facilities. Most of the time, OBI performed its work when the buildings involved were in the finishing stages and were in the process of being turned over to the owner or to the client. OBI's installers received health and safety training on these job sites from the general contractor, such as from representatives of PCL or Ellis-Don.

11. OBI's first office was located on Preston Street and had a very large sign in front of it with the Company's name on it. OBI then moved to a new location in 1978 or 1979 on Colonnade Road, where there is a large sign in front which says "OBI". Throughout its operations, the Company has advertised in the yellow pages and from time to time in newspapers and has also been actively involved in the community and in various charitable events. Neither Mr. Leclair, nor anyone else at OBI, heard anything further from the Union until the Grievance was filed in 2006.

12. At that time, OBI was working at the Ottawa Hospital under contract with the Royal Ottawa Health Care Group on a site on which Ellis-Don was also working. According to Mr. Short, this was a very large project for OBI and involved the supply and installation of all furniture other than beds and including auditorium seating, at a new hospital location. It also involved the disposal of the old furniture at the former hospital location. The Union noted that the work OBI was doing at the Ottawa Hospital was being performed by non-union personnel and consequently filed the present Grievance in respect of that work.

13. According to the evidence of Mr. Delphis Boudreau, the local coordinator and former business representative for the union, OBI was listed in the internal records of the Ontario Provincial District Council ("OPDC") from 1979 as a company bound to the Provincial Agreement in Ontario and a copy of the Collective Agreement was maintained in the union's records. Mr. Boudreau testified that the type of work that OBI was doing at the Ottawa Hospital, which involved installing cabinets to walls and cutting out countertops for sinks, has always been carpentry work since at least 1976 up to and including when the Grievance was filed in 2006.

14. Mr. Boudreau, who has been a member of the Union since approximately 1976, also testified about what work associated with the installation of office furniture is work to which the Carpenters' Union lays claim. He noted that the Carpenters claim the unloading of millwork and cabinets to the position where they are being installed. While he indicated that they do not claim the assembly of free-standing desks or chairs, they do claim the assembly of partitions and the assembly of furniture systems that are fastened to the floor, wall or ceiling. According to his evidence, the Carpenters' Union similarly claim the assembly of furniture systems if they are fastened to the floor, wall or ceiling and also currently claim work associated with the installation of desks, casebooks, bookshelves, partitions, blackboards, whiteboards, and credenzas. Mr. Boudreau also indicated that he knows of no reason why the Carpenters would not have claimed that work in the period since 1976 when OBI signed the Collective Agreement with the Union.

Decision

15. The preliminary issues to be determined are: 1) whether the Union has abandoned its bargaining rights acquired when Mr. Leclair signed the Collective Agreement in February 1976 by failing to enforce those rights in the 30 year period thereafter and prior to the filing of the Grievance in December 2006; and 2) if not, whether the Union is, in any event, estopped from enforcing its rights under the Provincial Agreement by its conduct in failing to enforce them during that thirty year period.

(i) Abandonment

16. It is well-established that a trade union can abandon its bargaining rights. In *John Entwistle Construction Limited,* [1979] OLRB Rep. March 211, the Board explained the underlying rationale for this and the factors relevant to a finding of abandonment at paragraph 10 and 11, as follows:

> 10. The principle of abandonment of bargaining rights has been established for many years in the Board's jurisprudence. This principle finds expression in the expectation that a trade union, once it acquires bargaining rights by certification or voluntary recognition, actively will promote those rights. Conversely, failure to use the rights may result in the trade union's loss of them. See the Board's decision in *J.S. Mechanical,* Board File No. 1677-78-R (as yet unreported) at paragraph 4 for a comprehensive outline of Board cases dealing with this principle.
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> 11. The issue of whether a trade union has abandoned its bargaining rights must be determined on the particular facts of each case. The Board has looked to a variety of factors in the bargaining relationship as indicators of whether bargaining rights have been abandoned. Some of these are canvassed in paragraph 5 of J.S. Mechanical, supra and include: the length of the union's inactivity; whether it has made attempts to negotiate a collective agreement or sought to administer an existing collective agreement; whether terms and conditions of employement (sic) have been changed by the employer without objection from the bargaining agent; and whether there are any extenuating circumstances which might explain an apparent failure to assert bargaining rights.

A trade union will therefore be taken to have voluntarily abandoned its bargaining rights where it does not actively promote those rights. A determination of whether or not a trade union abandoned its bargaining rights in any given case is a question of fact to be determined having regard to all of the circumstances.

17. In this case, OBI bears the onus of establishing that abandonment has occurred. The presumption that trade unions do not voluntarily abandon bargaining rights must be overcome by establishing evidence to support a finding of abandonment. As noted in *Ellis-Don v. Ontario (Labour Relations Board),* [1995] O.J. No. 3924 Ontario Court of Justice (General Division) Divisional Court, at paragraph 32, the unlikely possibility of a trade union "intending" to give up its bargaining rights "…is reflected in the Board's jurisprudence that requires unequivocal evidence that a trade union has "slept on its rights": See *Lorne's Electric*, [1987] OLRB Rep. Nov. 1405; *The Hudson's Bay Company,* [1993] OLRB Rep. June 563; and *Toronto Dominion Bank*, [1995] OLRB Rep. May 686. (sic)"

18. In assessing the necessary evidence, the Board takes into account that the allegations often relate to events that occurred long ago and that reasonable inferences may need to be drawn from the available evidence. The Board in *G.S. Wark Ltd.*, [1996] OLRB Rep. September/October 811, at paragraph 21, qualified the test as follows:

> 13. Notwithstanding the language used in some Board decisions, we respectfully suggest that it is inaccurate to say that "clear and cogent" evidence is required to establish abandonment, at least in the sense suggested by Local 1. First of all, the Board's factual determinations are always made on the balance of probabilities, while "clear and cogent", as argued by Local 1, suggests some higher test. Second, a common feature of abandonment cases is a less than satisfactory evidentiary foundation. It is not unusual, as in the case herein, for abandonment cases to deal with long periods of time for which there is little documentary evidence and where witnesses are either unavailable or have a very poor recollection of events. Many abandonment cases have to be determined on the basis of inferences drawn from bits of documentary or other evidence which is available. Accordingly, what constitutes evidence of abandonment, and what evidence is sufficient to rebut the presumption against abandonment, will depend on the circumstances. Further, since the operative presumption is clearly rebuttable, the onus can shift to the trade union to establish its conduct (as it does when it comes to a consideration of automatic collective agreement renewal clauses, for example – see below).

Evidence must therefore be presented from which a reasonable inference can be drawn, on a balance of probabilities, that the trade union abandoned its bargaining rights despite the presumption that trade unions do not generally intend to do so.

19. The evidence required to rebut the presumption often involves evidence that the trade union concerned either knew, or reasonably ought to have known, about the fact that the employer regularly performed bargaining unit work on a non-union basis. The nature and quality of the evidence required to meet the onus is described as follows in *Toronto Dominion Bank*, [1995] OLRB Rep. May 686 at paragraph 65:

> 65. In cases of abandonment the Board must start with the proposition that the union holds bargaining rights. … The focus then turns to whether there is compelling evidence that the union abandoned the rights it attained. That evidence could take any number of forms. The clearest form of evidence for example would be a written communication from the trade union to the employer that it no longer wished to represent the employees for whom it holds bargaining rights. In other instances, the evidence might be such that, notwithstanding that fact that there is not an express representation to that effect, the *conduct* or *affirmative actions* taken by the trade union are such that a reasonable inference can be drawn that the union abandoned its bargaining rights. Typically this is shown through evidence that the employer consistently performed work on a non-union basis, *and* the trade union knew or reasonably ought to have known of that fact. In either circumstance however the onus is on the employer which asserts abandonment to present clear and unambiguous evidence from which the Board can conclude or draw a reasonable inference that the trade union abandoned bargaining rights. The onus is not on the trade union to assert that it has affirmatively exercised its bargaining rights or has not abandoned them.

> Rather, unequivocal evidence which either points to actual abandonment or from which a reasonable inference can be drawn is required.

As such, a party that asserts that a trade union's bargaining rights have been abandoned must present clear evidence from which a reasonable inference can be drawn that a trade union abandoned its bargaining rights. The party alleging abandonment must put forward evidence suggesting that the union either voluntarily gave up its bargaining rights or "slept on its rights" by failing to promote or exercise them.

20. Where the party alleging abandonment calls sufficient evidence to rebut the presumption, the onus will shift to the union to explain its conduct. (*G.S. Wark Ltd., supra*). For example, as noted in *R. Reusse Co. Ltd.*, [1988] OLRB Rep. May 523 at paragraph 13, "... as a general rule, the Board has regard to a second automatic renewal of a collective agreement but thereafter the onus is on the union to satisfy the Board that its bargaining rights have not been abandoned by showing its interest in maintaining those rights through contact with the employer party to the agreement: *The Belleville and District Builders' Exchange, supra*; *Cooksville Steel Limited, supra*; *Pinkerton's of Canada Limited, supra*. Absent evidence that the union actively pursued its bargaining rights, the Board has held the union has "slept on those rights" and must be taken to have abandoned those rights: *Elgin Construction, supra*; *Mattagami Construction, supra*; *Catalytic Enterprises, supra*; *John Entwistle Construction Limited, supra*; *York Finch General Hospital*, supra."

21. Even though it remains possible to establish abandonment of provincial bargaining rights in the ICI sector, it is well-established that it is difficult to do so, given the way that bargaining rights are held in that sector. (See for example, *G.S. Wark Ltd., supra* and *C.S.B.I. Contracting Ltd.*, [2000] O.L.R.D. No. 98). In *J & D Display & Interiors Ltd.*, [1998] OLRB Rep. March/April 217, the Board agreed with the comments expressed in *G.S. Wark Ltd., supra*, to the effect that it remained possible to find abandonment post-provincial bargaining if every affiliated bargaining agent and the employee bargaining agency confirmed that bargaining rights were abandoned and explained the rationale and necessary factual findings, as follows:

> 45. The statements made by the Board in paragraph 16 of *G.S. Wark* (above) must be read in this context. I agree with the comments made by the Board there in paragraph 16, that "to the extent that either of these decisions, or others, suggest that the conduct of an employee bargaining agency or an affiliated bargaining agent cannot weigh against other affiliated bargaining agents (or the employee bargaining agency, which in any case is always also an affiliated bargaining agent) for the purpose of determining whether bargaining rights have been abandoned, we also respectfully disagree." Certainly, the conduct of the employee bargaining agency, authorized by statute to represent the affiliated bargaining agents in certain respects, can be held against the affiliated bargaining agents, as can the conduct of an individual affiliated bargaining agent. In the latter case, however, an individual affiliated bargaining agent is not authorized, by law at least, to speak on behalf of other affiliated bargaining agents with respect to their jointly held bargaining rights. In practice, an affiliated bargaining agent might become so authorized. This possibility is in part why the Board has noted so many times that, even in the ICI sector, abandonment is a question of fact. Nevertheless, for the Board to conclude that bargaining rights in the ICI sector have been abandoned, the Board must find that every affiliated bargaining agent and the employee bargaining agency have all abandoned bargaining rights.

> 46. Any finding of abandonment not premised on such a finding would be inconsistent, as a matter of law, with the provincial ICI scheme. To adopt a test or approach that only assesses the conduct of particular affiliated bargaining agents, but not all of them, would serve to override the provincial scheme in the ICI sector. It could also potentially undermine that scheme. For example, if the Board only considered the actions of the affiliated bargaining agent in the Board Area(s) where a contractor had been working, in considering whether abandonment had occurred, the affiliated bargaining agent and the contractor could arguably enter into a local arrangement which would otherwise be unlawful as an arrangement inconsistent with the provincial agreement. Through the device of a locally engineered abandonment of bargaining rights, the two local parties could agree to terms and conditions contrary to the provincial agreement, and after the work was performed under this local arrangement, the contractor could voluntarily recognize the union. While this scenario may be unlikely, it illustrates the inappropriateness of focusing only on local behaviour.
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> 47. One example of where abandonment could occur in the ICI sector is provided at paragraph 16 of *G.S. Wark*: the employee bargaining agency, authorized to speak on behalf of all its affiliated bargaining agents, acts in a manner that indicates that it and all the affiliated bargaining agents have abandoned their bargaining rights with a particular contractor. There are no doubt other hypothetical examples, but for any of them, if any affiliated bargaining agent cannot be said to have exhibited evidence of abandonment itself, through its own actions (or inaction) or through the actions (or inaction) of an agent authorized to represent it for this purpose, there cannot as a matter of law be abandonment in the ICI sector. This is the necessary effect of the statutory scheme.

A finding that abandonment occurred in the period post-provincial bargaining requires evidence of abandonment by every affiliated bargaining agent and the employee bargaining agency. It is consequently considerably more difficult to establish abandonment of ICI bargaining rights because of the way that bargaining rights are distributed under the Act.

22. The facts relevant to the issue of abandonment in this case commence on or about February 20, 1976 when Mr. Leclair on behalf of OBI signed the Collective Agreement with the Union. He accepted to have the installation work OBI had been contracted to perform at the University of Ottawa done using unionized carpenters who worked for a few days under the supervision of one of OBI's installers. While the evidence is far from clear, it seems likely that those carpenters were paid for their work by the general contractor at the rates prescribed by the Collective Agreement, which was in effect from July 16th, 1975 to April 30th, 1977. That Collective Agreement then renewed itself pursuant to its terms for a further year period prior to the advent of provincial bargaining in March 1978.

23. Once OBI's work at the University of Ottawa was completed, the Union did not follow up with OBI to determine what other work OBI was doing and whether the Company was complying with the Collective Agreement. The evidence indicates that, in that two year period prior to the advent of provincial bargaining and the twenty-eight year period thereafter, OBI continued to perform installation of office furniture on a regular and continuous basis and without regard to the Union's collective bargaining rights. OBI never sought to hire unionized carpenters through the Union's hiring hall to do any of this work and never paid its installers in accordance with the Collective

Agreement or the applicable Provincial Agreement. The period of the union's inactivity in the present case is therefore approximately two years prior to the advent of provincial bargaining and approximately twenty-eight years thereafter.

24. Since OBI did not operate within the geographic area of every affiliated bargaining agent, the evidence of the union's lack of enforcement of the Provincial Agreement in the period after the advent of provincial bargaining falls short of establishing abandonment of bargaining rights by every affiliated bargaining agent and the employee bargaining agency in the period post-provincial bargaining particularly. The responding party did not, in any event, suggest that it did, but rather relied on the fact that OBI continued to perform its installation work on a non-union basis without regard to any obligations it may have had under the Provincial Agreement for a period of twenty-eight years as corroborative of the fact that the union abandoned its bargaining rights prior to provincial bargaining. As noted by the Board in *Marineland of Canada Inc., supra,* evidence of post-provincial bargaining conduct may be relevant to a determination of whether bargaining rights were, in fact, abandoned prior to March 3, 1978.

25. It is therefore appropriate to consider the union's conduct in the period after provincial bargaining in order to assess whether that conduct is consistent or inconsistent with an earlier abandonment of bargaining rights. The facts in the present case are however considerably different from those before the Board in *Marineland of Canada Inc., supra,* in which the period of inactivity prior to provincial bargaining was followed not only by many years of inactivity, but also by conduct demonstrating the trade union's belief that no bargaining rights were in fact held. In that case, the union demonstrated its belief that no bargaining rights were held when, after three years of inactivity, it sought to organize the employees and obtain bargaining rights. In addition, in that case, unlike the present one, the construction work performed by the responding party was so obvious to anyone driving past the amusement park at the Marineland complex that the Board was able to infer that the trade union's representative was aware of the regular construction and expansion at that location and yet did nothing to enforce the trade union's bargaining rights.

26. In the present case, however, while OBI performed installation of office furniture systems, including work claimed by the Carpenters' Union, on a regular and continuous basis, much of that installation work was performed during the finishing stages of a construction project and inside various office buildings. It cannot, in all of the circumstances, be reasonably inferred that the union's representatives were actually aware of that ongoing work performed on a non-union basis as was the case in *Marineland of Canada Inc., supra.* There is further no evidence of any conduct by the union demonstrating its belief that it did not hold bargaining rights as was the case in *Marineland of Canada Inc., supra* when the trade union sought to obtain bargaining rights for the employees. Instead, the evidence in the present case suggests that the Union continued to consider OBI to be bound by the Provincial Agreement after the advent of provincial bargaining in that the Company's name was listed in the OPDC's internal records as a company bound to the Provincial Agreement. In all the circumstances, I am not persuaded that the Union's failure to actively enforce its bargaining rights in the period after provincial bargaining may be viewed as corroborative of an earlier abandonment of bargaining rights prior to March 3, 1978.

27. It therefore remains to be considered whether the evidence led in respect of the Union's inactivity in the two year period prior to the advent of provincial bargaining is sufficient to rebut the presumption that a trade union does not intend to abandon its bargaining rights. During that two year period, the Collective Agreement remained in effect throughout and the Union made no inquiries of

OBI as to whether the Company was performing any work falling within its scope. While it is difficult to determine from the evidence which projects performed in the 1970's were performed during that two year period and how much of the installation work involved is work which fell under the scope of the Collective Agreement, it seems likely that OBI did some such work in that period and that the Union might have discovered OBI's failure to apply the Collective Agreement had it followed up with representatives of OBI following the signing of the Collective Agreement. However, as noted, much of OBI's installation work was performed inside various buildings during the finishing stages of construction and it is not, in my view, possible to conclude on the evidence that the Union knew or ought reasonably to have known that OBI was performing bargaining unit work on a non-union basis in that two year period.

28. The situation in the present case is therefore similar to that in *J & D Display & Interiors Ltd.*, [1998] OLRB Rep. March/April 217. In that case, the Board was also unable to find abandonment in the period after provincial bargaining given the absence of conduct on the part of every affiliated bargaining agent and the employee bargaining agency which would support such a finding (given that the responding party was not engaged in projects in the majority of the Board Areas). In that case, the Board rejected the contention that the trade union abandoned bargaining rights between December 1976 and provincial bargaining in March 1978 reasoning as follows:

> 51. While Local 27 would have known that J & D was in business, having dispatched men to it for the Toronto Eaton Centre job, its failure to contact J & D after that project is reflective of inattention, not abandonment. A union is not expected to be aware of each and every job or project engaged in by a contractor in a particular Board Area, and its failure to actively pursue contractors over a relatively short period suggests perhaps indifference or lack of resources. To require a union to monitor or investigate in these circumstances, failing which bargaining rights would be nullified, would be impractical and unrealistic. The failure to contact J & D again or to discover the projects in question here cannot be taken to indicate any intention to abandon bargaining rights. Bargaining rights were not abandoned prior to March 3, 1978.

In reaching the conclusion that the union's failure to contact the responding party in the period from December 1976 to March 1978 and its consequent failure to discover the responding party's ongoing projects during that period was reflective of inattention rather than abandonment, the Board considered the fact that the circumstances did not suggest that the union was actually aware of the responding party's ongoing projects. In that regard, the Board similarly distinguished the situation before it from that in *Marineland of Canada Inc., supra*, noting that the construction work performed by the responding party did not have the visibility and presence of that performed at Marineland, in which a mountain was being built almost at the doorstep of the then business agent for the union.

29. The same considerations apply in the present case where the period of inactivity prior to provincial bargaining was approximately two years from shortly after February 20, 1976 to March 13, 1978. During that time, the Collective Agreement remained in effect, but the Union failed to monitor or investigate OBI's activities and was not apparently aware of its use of non-union installers during this period of time to perform certain work which, in the Union's view, fell under the scope of the Collective Agreement. The evidence indicates that OBI had three installers during this period and that some of their work, involving the delivery of chairs and desks to office buildings which were not then affixed to the floor or walls, was arguably not even work in the construction industry. The evidence does not, in any event, indicate that the amount of bargaining unit work done during this

period was so extensive or visible that it can be inferred that the Union knew or ought to have known that OBI was operating its business contrary to the Collective Agreement.

30. The present case is not further one in which the onus may be said to have shifted to the trade union to explain its conduct as was the case in *Burling Ranger Co.*, [2007] O.L.R.D. No. 396. In that case, the period of the trade union's inactivity prior to provincial bargaining took place over four years during which the collective agreement in issue had either expired or had been the subject of as many as four automatic renewals prior to 1978. In these circumstances, the Board found that the onus had shifted to the trade union to explain its inactivity after 1974, when the union's representative gave the company notice to bargain in 1974. The Board in that case ultimately determined that the union had abandoned its bargaining rights prior to the advent of provincial bargaining in view of the union's failure to provide a satisfactory explanation for its inactivity and the corroborative evidence in the post-provincial bargaining period to the effect that representatives of the trade union were aware that Burling operated as a "non-union" company or business during the 1980's and the 1990's.

31. The present case is also distinguishable from the situations before the Board in *J.S. Mechanical*, [1979] OLRB Rep. February 110, *Hugh Murray Ltd.*, [1979] OLRB Rep. July 664; *Twin City Plumbing & Heating*, [1982] OLRB Rep. April 631 and in *Paul Daoust Construction Ltd.*, [1999] O.L.R.D. No. 1259 referred to by the responding party. In each of these cases, the trade union concerned did not simply fail to direct its resources to investigating the responding party's activities in order to police an existing collective agreement, but also failed to represent the employees altogether when it took no steps to negotiate a collective agreement or to renegotiate an expired agreement for a period of years.

32. In *J.S. Mechanical, supra,* one of the factors the Board considered in concluding that the trade union abandoned its bargaining rights was the fact that the union deserted the employees and the employer in the middle of its own attempt to renew the collective agreement and did nothing to promote its bargaining rights for the employees for a period of almost three and a half years thereafter. Similarly, in *Hugh Murray Ltd., supra,* the Board had regard to the fact that, in the period prior to the advent of provincial bargaining, the union failed to serve notice to bargain on the responding party (or even to contact the responding party) during a four year period after the collective agreement came to an end at the latest in April 1974. In these circumstances, the Board found that the trade union had acted at all times as though it did not have bargaining rights for the company's employees. Although the period of the union's inactivity in *Paul Daoust Construction Ltd., supra,* was shorter in that it commenced from August 1976 when a "No Board" report issued until the advent of provincial bargaining in March 1978, the context again involved a failure to negotiate a renewal agreement after the previous agreement had expired.

33. The situation in the present case is not, however, one in which the union failed to represent the employees despite several automatic renewals of the collective agreement or deserted the employees in bargaining despite the expiry of the collective agreement. Instead, the evidence led in the present case suggests the union remained unaware of OBI's activities due to its failure to make inquiries in the period prior to provincial bargaining. While the Union's failure to do so reflects poor quality representation of its members, I am not persuaded in all the circumstances that its inattention in that regard provides unequivocal evidence of its intention to abandon its bargaining rights prior to March 3, 1978 and thereby rebuts the presumption that a trade union does not intend to do so.

34. For all these reasons, I am unable to find on the evidence led that the Union abandoned its bargaining rights for employees of OBI.

(ii) Estoppel

35. The responding party's alternative contention that the Grievance should nonetheless be dismissed because the Union is estopped from enforcing its rights under the Provincial Agreement remains to be considered.

36. The issue of whether promissory estoppel can apply against a provincial agreement was squarely addressed and accepted in *Jacobs Catalytic Industrial Services Ltd.*, [2007] OLRB Rep. Nov./Dec. 1043 (application for judicial review dismissed in [2009] OLRB Rep. Jan./Feb. 158). In finding that estoppel can operate not to require the strict enforcement of a provincial agreement, the Board in that case considered the earlier decision in *Culliton Brothers Ltd.*, [1982] OLRB Rep. March 357, which stated that the doctrine of estoppel cannot be invoked to prevent the operation of a public statute and treated an estoppel against the application of a provincial agreement as being the same as an estoppel against the application of the Act itself. The Board in *Jacobs Catalytic Industrial Services Ltd., supra,* however distinguished between the application of a provincial agreement and the application of the Act. It consequently found that, in specific circumstances, based on equity, it might be unconscionable for particular beneficiary of rights under the provincial agreement to enforce those rights and that the trade union is consequently estopped from claiming damages arising under a provincial agreement.

37. In *Toronto Dominion Bank*, [1995] OLRB Rep. May 686, the Board determined that such circumstances existed where the trade union failed to enforce the union security provisions of the provincial agreement for a period of 15 years. Even though the conduct of a trade union in failing to enforce its bargaining rights did not give rise to an inference that the trade union intended to abandon them, such conduct nonetheless resulted in a finding that the trade union was estopped, as a matter of equity, from enforcing those rights for a period of time. The Board in that case explained the distinction and the differing evidence necessary to establish abandonment and estoppel, as follows:

> 72. A determination of "estoppel" on the other hand is based on the fact that bargaining rights exist. However, as a matter of equity, and by reason of the trade union's conduct or representations, the trade union is "estopped" or precluded from relying upon those existing bargaining rights to claim benefits which flow from the assertion of those bargaining rights. Abandonment is the relinquishment of bargaining rights – estoppel the inhibition to assert bargaining rights.
>
> 73. Two practical consequences flow from the distinction between abandonment and estoppel. The first is the difference in the nature of the evidence required to be adduced to support either finding. As indicated, in order to support a finding of abandonment the employer must adduce unambiguous and unequivocal evidence that the union has, in effect, "walked away from its bargaining rights" or that there has been some affirmative action or conduct by the union which points to, or enables the Board to draw an inference of abandonment. In our view the evidence to support an estoppel however is qualitatively different. Although the union may not be required to prove through affirmative conduct that it *asserted* or exercised its bargaining rights to counter

> the employer's claim that it abandoned those rights, it may be required to lead evidence with respect to its conduct to counter a claim of estoppel.
>
> 74. The second practical consequence which flows from the distinction between abandonment and estoppel relates to the issue of remedy. Typically, in a labour relations context, estoppel does not generally relate to the entirety of the collective agreement. Generally, where an estoppel is raised, the estoppel relates only to those provisions of the collective agreement which the trade union has represented it will not strictly enforce (either expressly or implicitly by reason of its conduct). Thus, while a finding of abandonment has the effective result that the union's bargaining rights no longer exist and *none* of the bargaining rights can be asserted, the effective result of a finding of estoppel is that it only affects those rights or benefits which the union is precluded from relying upon because of its representations to the employer. The rights or benefits of the agreement which are the focus of this case revolve around the "union security" provisions of the agreement – the obligation to use only employees who are union members hired through the union hall to perform construction work, or the obligation to sub-contract work to unionized contractors ie. those in contractual relationships with the union.

The evidence required to support a finding of estoppel does not therefore involve the same clear and unambiguous evidence required to establish an abandonment of bargaining rights. Instead, a trade union's failure to assert its bargaining rights for a significant period of time will generally result in it being precluded from relying on those rights given its effective representation to the employer that it would not be enforcing them.

38. In *Toronto Dominion Bank, supra*, while there was nothing in the evidence to indicate that the trade union had "actively promoted" the bargaining rights it had obtained, the Board was not persuaded that the evidence led demonstrated unambiguous or unequivocal evidence of abandonment. The Board was nonetheless satisfied that the essential elements of an estoppel had been established in the circumstances and, in that regard, noted the evidence of the trade union's conduct in not enforcing collective agreement obligations since 1978 during which time the Bank performed some of its construction work on a "non-union" basis. In addition, the trade union's lack of contact with the Bank over the previous fifteen years was found to convey to the Bank that the trade union was not policing its agreements and did not require strict adherence to the union security provisions of the provincial agreement. Since the Bank had relied on those representations in the manner in which it determined to perform its construction activities, the trade union was found to be estopped from asserting its bargaining rights for a reasonable period of time.

39. In the face of fifteen years of silence, the Board determined that the Bank need not have altered the manner in which it conducted its construction activities merely because it received notice of a grievance. The Board instead determined the requisite notice that brought the estoppel to an end came with the issuance of the Board's decision and therefore that the estoppel would not apply to contracts entered into after that date.

40. Similarly, in *Steds Ltd.*, [1992] OLRB Rep. Jan. 67, while the Board declined to determine the precise length of the estoppel, it found that the failure of the local union to enforce its bargaining rights for many years resulted in the local union being estopped in the grievance. In doing so, the Board noted that the local union had by its conduct lulled the responding party employer into believing that it was not bound to recognize the union or work pursuant to the province-wide ICI

collective agreement. Given that the responding party employer had developed its business on the basis of that representation, it was found to be unfair and inequitable for the local union to insist suddenly on its strict legal rights.

41. The same considerations apply in the circumstances of the present case where the Union has, by its silence and its failure to police the collective agreements binding OBI for a period of approximately thirty years, conveyed to OBI that it did not require compliance with the provisions of the Provincial Agreement. In the circumstances, it would, in my view, be inequitable for the Union to insist on adherence to the union security provisions of the Provincial Agreement at the Ottawa Hospital project having made no effort to contact the Company in that thirty year period. In all the circumstances, I find that the Union is estopped from insisting on its strict legal rights for a reasonable period of time. In view of the length of the Union's silence in this case, and for the reasons articulated in *Toronto Dominion Bank, supra*, I find that the requisite notice that brings the estoppel to an end comes with the issuance of this decision such that the estoppel applies to work bid or contracts entered into prior to the date of this decision and ceases to apply thereafter.

Disposition

42. For all these reasons, although I have determined and declare that OBI is bound to the Provincial Agreement and is bound to recognize the union's bargaining rights, the Grievance is otherwise dismissed.

4260-10-R Claudette Bradshaw, Applicant v. Hospitality & Services Trades Union Local 261, Responding Party v. **Palisades Retirement Residence Inc.,** Intervenor

Collective Agreement – *Hospital Labour Disputes Arbitration Act* – Interest Arbitrations – Termination – The applicant applied for a declaration that the union no longer represented the employees in its bargaining unit – The union argued that the application was untimely because several clauses of an interest arbitration award that was issued to the parties were still in dispute – The employer claimed that there were no outstanding issues with the arbitration award – Concerning timeliness, the Board considered whether the arbitration award determined a collective agreement under section 12(2) of the *Hospital Labour Disputes Arbitration Act* and s. 63(2) of the Act, and found that it did; the application was therefore timely – The Board noted that the arbitrator's introductory remarks indicated that the agreed-upon items were to be incorporated into the collective agreement and that the arbitrator would only remain seized to address implementation issues – The Board also cited the fact that the arbitrator indicated the term of the collective agreement settled by the award, and the fact that the union had given notice to bargain as evidence that a collective agreement had been determined – The fact that the parties had not signed or prepared a formal collective agreement was inconsequential to the Board's finding that a collective agreement did exist – Termination application continues

BEFORE: *Brian McLean*, Vice-Chair.

DECISION OF THE BOARD: June 7, 2011

1. This is an application for termination of bargaining rights filed under the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act").

2. The applicant has applied to the Board under section 63 of the Act for a declaration that the responding party trade union no longer represents the employees in the bargaining unit for which it is the bargaining agent.

3. In the response to the application, the union took the position that this application is untimely. By decision dated April 19, 2011 and following the holding of a representation vote, the Board invited submissons on this issue.

Facts

4. The following facts are not in dispute:

a) On July 13, 2009 the union and the employer attended before William Kaplan, who issued an interest arbitration award (the "Kaplan award") dated July 17, 2009 pursuant to the *Hospital Labour Disputes Arbitration Act*.

b) The Kaplan award stated that "unless dealt with in this award, all outstanding employer and union proposals are dismissed".

c) The Kaplan award stated under the Heading "Term": "As agreed upon by the parties, the term of the collective agreement settled by this award will run from April 1, 2007 until March 31, 2011".

d) The Kaplan award went on to determine issues relating to wages, paid holidays, vacation, benefits, and uniforms before concluding that "At the request of the parties, I remain seized to deal with any implementation issues".

e) On December 31, 2010 the union, by letter, gave notice to the employer to bargain for a new collective agreement.

f) This application for termination was filed on March 28, 2011.

5. The following facts are in dispute:

a) The union submits that the "parties have agreed that several clauses remain in dispute" and that those issues have been referred to Arbitrator Kaplan.

b) The employer submits that the parties "have no agreement that any issues remain outstanding, only the Union is claiming that there are issues outstanding and as such has only recently referred anything to the Arbitrator Kaplan."

Issue

6. The issue before the Board is whether the Kaplan award determines a collective agreement for the purposes of s. 12(2) of *HLDAA* and s. 63(2) of the Act. If the answer is yes, the application for termination is timely; if not, the application is untimely.

Statutory Framework

7. The parties are covered by the *Hospital Labour Disputes Arbitration Act* ("*HLDDA*"), which sets out in subsection 12(2) the conditions for the timeliness of representation applications where notice has been given to bargain a renewal collective agreement, as is the case here:

> (2) Despite section 67 of the *Labour Relations Act, 1995*, where notice has been given under section 59 of that Act by or to a trade union that is the bargaining agent for a bargaining unit of employees of a hospital to or by the employer of such employees and the Minister has appointed a conciliation officer, an application for certification of a bargaining agent of any of the employees of the hospital in the bargaining unit defined in the collective agreement or an application for a declaration that the trade union that was a party to the collective agreement no longer represents the employees in the bargaining unit defined in the agreement shall not be made after the day upon which the agreement ceased to operate or the day upon which the Minister appointed a conciliation officer, whichever is later, except in accordance with section 7 or subsection 63 (2) of the *Labour Relations Act, 1995*, as the case may be.

8. Section 63(2) (a) & (b) of the Act state:

> **63.** (2) Any of the employees in the bargaining unit defined in a collective agreement may, subject to section 67, apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit,
>
> (a) in the case of a collective agreement for a term of not more than three years, only after the commencement of the last three months of its operation;
>
> (b) in the case of a collective agreement for a term of more than three years, only after the commencement of the 34th month of its operation and before the commencement of the 37th month of its operation and during the three-month period immediately preceding the end of each year that the agreement continues to operate thereafter or after the commencement of the last three months of its operation, as the case may be;
>
> ...

9. Other sections of *HLDAA* which have a bearing on this issue are:

> (3) Where, during the bargaining under this Act or during the proceedings before the board of arbitration, the parties have agreed upon some matters to be included in the collective agreement and have notified the board in writing of the matters agreed upon, the decision of the board shall be confined to the matters

not agreed upon by the parties and to such other matters that appear to the board necessary to be decided to conclude a collective agreement between the parties.

(4) Where the parties have not notified the board of arbitration in writing that, during the bargaining under this Act or during the proceedings before the board of arbitration, they have agreed upon some matters to be included in the collective agreement, the board shall decide all matters in dispute and such other matters that appear to the board necessary to be decided to conclude a collective agreement between the parties.

(5) Within five days of the date of the decision of the board of arbitration or such longer period as may be agreed upon in writing by the parties, the parties shall prepare and execute a document giving effect to the decision of the board and any agreement of the parties, and the document thereupon constitutes a collective agreement.

(6) If the parties fail to prepare and execute a document in the form of a collective agreement giving effect to the decision of the board and any agreement of the parties within the period mentioned in subsection (5), the parties or either of them shall notify the chair of the board in writing forthwith, and the board shall prepare a document in the form of a collective agreement giving effect to the decision of the board and any agreement of the parties and submit the document to the parties for execution.

(7) If the parties or either of them fail to execute the document prepared by the board within a period of five days from the day of its submission by the board to them, the document shall come into effect as though it had been executed by the parties and the document thereupon constitutes a collective agreement under the *Labour Relations Act, 1995*.

(8) Except in arbitrations under section 8, the date the board of arbitration gives its decision is the effective date of the document that constitutes a collective agreement between the parties.

(9) The date the board of arbitration gives its decision under section 8 upon matters of common dispute shall be deemed to be the effective date of the document that constitutes a collective agreement between the parties.

(10) Except where the parties agree to a longer term of operation, any document that constitutes a collective agreement between the parties shall remain in force for a period of one year from the effective date of the document.

(11) Despite the provisions of subsection (10) and except where the parties agree to a longer term of operation, a document that constitutes a collective agreement shall cease to operate on the expiry of a period of two years,

(a) from the day upon which notice was given under section 16 of the *Labour Relations Act, 1995*; or

(b) from the day upon which the previous collective agreement ceased to operate where notice was given under section 59 of the *Labour Relations Act, 1995*. R.S.O. 1990, c. H.14, s. 10 (11); 2000, c. 38, s. 39 (8, 9).

> (12) Where under subsection (11), the period of two years has expired on or will expire within a period of less than ninety days from the date the board of arbitration gives its decision, the document that constitutes a collective agreement shall continue to operate for a period of ninety days from the date the board of arbitration gives its decision for the purposes of subsections 7 (4), 59 (1) and 63 (2) of the *Labour Relations Act, 1995*. R.S.O. 1990, c. H.14, s. 10 (12); 2000, c. 38, s. 39 (10).

10. The union's submission is straightforward. It simply argues that the parties do not yet know what the term of the collective agreement is, and that therefore the Board cannot determine the last three months of its operation. The union submits that until "Arbitrator Kaplan sets the terms and the term of the collective agreement, the application is untimely by operation of law."

11. I do not find the union's submission's persuasive for the following reasons.

12. The award clearly states the term is "from April 1, 2007 until March 31, 2011". The award also made it clear that "all outstanding employer and union proposals are dismissed" (unless dealt with in the award) and that the arbitrator remained seized to "deal with any implementation issues". In my view the Kaplan award, on its face, is consistent with a finding that the term (and the terms) of the collective agreement has been settled.

13. My view is supported by the fact that the arbitrator in his introductory remarks makes it clear that "in negotiations, the parties were able to agree upon a number of items and, as requested by the parties, I direct that those agreed-upon items be incorporated into the collective agreement" and that he was being guided by "statutory and normative criteria" in "determining the outstanding issues". Additionally, the arbitrator specifically remained seized to address *any implementation issues*, not any substantive issues.

14. Accordingly, by examining the arbitration award it is clear that all substantive issues were determined by the Arbitrator.

15. Moreover, the fact that the union gave notice to bargain on December 30, 2010 reinforces my view. The union's notice is consistent with the 90 day period within which either party may give notice to bargain a new collective agreement pursuant to s. 59 of the Act. It also protects the union's interest under s. 12(2) of *HLDAA* by ensuring that, as long as the union applies for conciliation prior to the end of the collective agreement term the open period under s. 63(2) will close after the 90 day period is over.

16. The issue in this case is similar to that before the Board in *Golden Dawn Nursing Home* 2000 CanLII 12148 (ON LRB) where the incumbent union took the position that an arbitrator's award was effectively an interim award, and the raiding union argued that it was a final decision with a collective agreement formulated for the purposes of *HLDAA*. The Board reviewed its case law for determining when an arbitration process is complete (see paragraphs 14 -18), and at paragraph 19 had this to say when noting the difference between an award that was not final and one that was:

> 19. There are important differences between the award of the Beck board and that of the Barton board referred to in *The Corporation of the City of St. Thomas*. Here the Beck board has made a general cover-all provision for

> retaining jurisdiction to address issues which might arise from the issue of the award. While the Beck board purported to retain jurisdiction as regards the implementation and interpretation of its award, and to deal with any matters not yet dealt with, there are no issues left over for later determination. It seems that the purpose of such retention was to address unforeseen difficulties which might arise from the award. The purpose was not to hold over some issue of substance for later determination. That is, in part, what distinguishes the Beck board's retention of jurisdiction from that of the Barton board. The Barton board was not retaining some general, unspecified, overall jurisdiction to deal with unforeseen and unanticipated potential problems which the award might have created. It was issuing an interim award. It consciously referred a particular issue to the parties to address themselves with the positive intention that, if they could not do so, the Barton board would itself address and determine the matter. No such expectation existed for the Beck board. It thought it had done what it set out to do in paragraph 1 of its award: "to settle the outstanding issues in a first collective agreement" between the parties.

17. In the award at issue in *Golden Dawn* the arbitrator remained seized with respect to "the implementation and interpretation of this Award". In the award in this case arbitrator Kaplan remained seized only to deal with "any implementation issues'. The Board found in *Golden Dawn* that the purpose of the retention was not to hold over any issues of substance. Clearly, if that was the case in *Golden Dawn*, it was even more the case here. Arbitrator Kaplan made it clear that "all outstanding employer and union proposals are dismissed (unless dealt with in the award); he directed that "those agreed upon items be incorporated into the collective agreement"; he noted that "the term of *the collective agreement settled by this award* will run from April 1, 2007 until March 31, 2011 [my emphasis] and he remained seized of "any implementation issues".

18. The Board found in *Golden Dawn*:

> On a proper reading of the Beck board of arbitration award of January 5, 2000, that award sought to, and did, provide a complete collective agreement for the parties. To apply the phrase used by the Board in *The Corporation of the City of St. Thomas*, the Beck board provided a decision which was "sufficiently complete that the parties can … prepare the collective agreement giving effect to that decision". There is no issue which has not been dealt with by the board of arbitration. There may be an issue of interpretation or implementation of the provisions of paragraph 25 of the board's award, but that does not detract from the fact that the award dealt with everything the parties wanted the Beck board to deal with. The award was therefore a decision on matters of common dispute between the parties as contemplated under subsection 10(9) of HLDAA. The award of January 5 constitutes a final decision from which the time limits under HLDAA run. In other words, the Beck board may yet clarify the award as requested by the employer, but that does not detract from its finality. [para. 22]

19. This is very similar to the Kaplan award. There were no substantive issues which had not been dealt with by the award. In other words the award was "sufficiently complete [such that] that parties can … prepare the collective agreement giving effect to that decision". The letter received by the Board from the employer enclosing a letter from Arbitrator Kaplan dated May 11, 2011 does not change this finding. Arbitrator Kaplan's letter to the parties stated in salient part:

> As you know, a dispute arose with respect to whether certain items had been agreed upon in the negotiations prior to the settlement at [sic] the last Collective Agreement by interest arbitration. Both parties provided me with documentary and other evidence with respect to their positions. The case then proceeded to a conference call held earlier today. Having carefully reviewed all of the evidence, and having heard the submissions of both parties, I am of the view that the parties did not agree on the issues in question and, therefore, they do not form part of the Collective Agreement.

Neither party has advised the Board what the "certain items" were. In any event, this letter makes it clear that the "certain items' remaining were not issues that the arbitrator had to decide in his award. He decided all of the substantive issues between the parties (left undecided), including the term. What was left was whether "certain items" were "those agreed upon items" referred to in paragraph #1 of the award [see paragraph 13 above]. Returning to the award as a whole, and the silence from the parties about what the "certain items" were, I am of the view that the award permitted the parties to prepare a collective agreement.

20. In *St. Thomas (City)* [1997] OLRB Rep. March/April 373 the Board dealt with the issue of whether there must be a document constituting a collective agreement, for a finding under s. 10 of *HLDAA*. The Board stated:

> We will deal first with the issue of whether there must be a "document constituting a collective agreement". In our view there need not be a collective agreement in existence in order for subsection 10(12) to apply. What is required is the information necessary to be able to determine the expiry date of any document that would constitute the collective agreement. Subsections 10(6)-(7) do provide a mechanism whereby one or both parties to the arbitration process can require the interest arbitration board to prepare the written collective agreement resulting from the process and, if necessary, deem its execution by operation of the statute. However those are not necessary steps in order to determine the expiry date.

21. The fact that the parties had not signed or prepared a formal collective agreement document does not detract from my finding. A collective agreement requires two elements: the parties' agreement and a reduction of that agreement into writing. Here we have the parties' agreement reduced into writing by the award. It included those items the parties agreed upon (written elsewhere) and those items listed in the award.

22. For all of the above stated reasons, I am of the view that the award determined a collective agreement, with terms and a Term, for the parties and accordingly this application for termination of bargaining rights is timely.

23. The matter is referred to the Manager of Field Services so that the ballots can be counted.

24. The responding party is directed to post copies of this decision immediately, in a conspicuous location(s) where it is likely to come to the attention of the employees affected by this application. These copies must remain posted for a period of thirty (30) days.

0598-10-ES Sanford N. Pensler, a director of Korex Don Valley ULC, Applicant v. Ted Adams, Steve Ashley, Sebastian Assenza, David Baker, Solomon Bakharia, Leslie Beavan, Anthony Borg, Gary W. Boyd, Mike Boyd, Marie Brett, Reginald Bright, Susan Broadbent, Randolph Brown, Stephen Brown, Kenneth Brunton, Mahipaul Budnarain, Alexander Burlie, George Burlie, Ian Cameron, Sam Cancilla, Vincent Chan, Tom Cheung, Clarence Christian, John Ciordas, Fred J. Cook, Corey Corbin, Kim Cossar, Ryan Cox, David Cranstoun, Marcel Croteau, Mariano Cruz, Rick Cuthbert, Anthony Beckmans, Vince Delmedico, Vincent Dow, Christopher Downing, Ralph Downing, William Downing, David Dupuis, Peter Durnford, Hal Engelmann, Kelvin Ferguson, Paul Filipchuk, Raymond Fisher, Tony Flanagan, Gerald Forget, Michael Forget, Ronald Francis, Raselyn Gabriel, Jose Garde, James Garden, Kyle Garden, Marie Gariepy, Ronald Gaudet, Cliff Gibbons, Marc Goldin, Cecil Gray, Cindy Gray, Grace Guevara, Zubin Hansotia, Kenneth Hawkins, Tony Hewitt, Robert Hickie, Gerald Hitchcock, Paul Hunter, Akhtar Hussain, Harvey Jamieson, Brian Janes, Eva Jankovska, Arthur Jessop, Ian Johnstone, Peter Kataswa, Robert Kilgar, Derek Kotyluk, Patrick Lasorda, Matthew Lawson, Kevin Lee, Slava Levitin, Jongjun Li, Michael Lin, Donald Lockrey, Lawrence Lopresti, James Lozinski, Edward G. Ludgaate, Allan Lush, William Mackey, Vernon Marchaud, Paulo Martins, Stephen McConnack, Delbert McCulloch, Robert McCulloch, Wayne McDowell, Dean McGuire, Gary (Randy) McKibbon, Daulton McKitty, William McLachlan, Craig McRae, Barbara Mogavero, Peter Morgan, Angus Morrison, Glenn Morrison, Steven Mu, Robert Nasevski, Paul Neville, Helen Ngai, David Nixon, Emmanuel Osawe, Balram Outram, David Pal, Shane Park, Shailesh K. Patel, Larry Perkins, Tony Petracca, Scott Pflieger, Evelyn Pinsent, Robert Platt, Ernest Prentice, Dino Presutti, Marlene Pritchard, Nazeem Rahman, Peter Rechkemmer, George Reddy, Marino Regaspi, Emmanuel Reyes, Asif Riaz, Jack Roder, Allan Rosette, Alex Santos, Douglas Scott, William Scott, Olga Semechlo, Robert Sherk, Earnest Shimano, Robert Shimton, Charles Shipley, Ronald Short, Todd Short, Lakeram Singh, Paul Singh, James Smith, Frank Sobolewski, Peter Stapleton, Marek Szczygiel, Ramon Tantengco, Glenn Tennant, Chris Terpin, Kirk Tooley, Hien D. Tran, Robert Tucker, Dennis Valllilee, Jon Van Pelt, Jan Varady, Ryan Xinhai Wang, Tom Webber, John Welsh, Keith Wharmby, Richard Wilks, Lionel Williams, John Wyton, Zhi Hue Eric Zhao, Lily Zhou and Director of Employment Standards, Responding Parties

Employment Standards – This director's appeal of an order to pay vacation pay to a large number of employees of an insolvent company turned on the interpretation of s. 80(4): whether the exempting clauses under subsection (4) should be read disjunctively or conjunctively – The director relied on a statement in a Court of Appeal case that s. 80(4)(a) provides that Part XX does not apply to directors of corporations "that have been incorporated in another jurisdiction" and secondly, that "and" as used in s. 80(4) is used jointly and severally – The Board found that the Court of Appeal, in its two sentence statement on s. 80(4)(a) alone, did not express an opinion on whether subsection 80(4) as a whole was to be read disjunctively or not, and accordingly did not consider the decision binding – The Board noted that a disjunctive interpretation would not be consistent with a fair, large and liberal interpretation of the objects of the Act in that it would have the effect of immunizing directors of for-profit corporations not incorporated within Ontario, while directors of for-profit companies incorporated under Ontario law would be exposed to liability – Secondly, a disjunctive interpretation was also in disharmony with Part XX which makes it clear that whether the

employer was incorporated in Ontario or not was irrelevant: the factor which determines the applicability of the Act was where the employee performs the work – Furthermore a disjunctive reading would immunize non-profit corporations under clause (c), which is redundant since s. 80(2) already accomplishes that result – Finally, a conjunctive interpretation was in accord with earlier Board jurisprudence – The Board found that paragraphs (a), (b) and (c) of subsection 80(4) were to be read conjunctively – Application dismissed

BEFORE: *Patrick Kelly*, Vice-Chair.

APPEARANCES: *Rachel Sommers* appearing on behalf of the applicant; *Micheil Russell* and *Sara Guillaumant-Fitzgerald* appearing on behalf of the responding party employee Art Jessop and Communication, Energy and Paperworkers Union of Canada, Local 132; *Grainne McGrath* appearing for the Director of Employment Standards.

DECISION OF THE BOARD: June 2, 2011

1. This is a director's application under the *Employment Standards Act, 2000,* S.O. 2000, c.41, as amended (the "Act") for review of Order to Pay No. 39444.

Background

2. The Employment Standards Officer ("the Officer") determined that the applicant (or "Mr. Pensler") was liable for vacation pay owing and accrued during the final year of employment of a large number of employees of the insolvent company, Korex Don Valley ULC ("Korex").

3. The issue is whether or not Mr. Pensler is exempt from liability as a result of subsection 80(4) of the Act, which the applicant submits must be read disjunctively and which the Director of Employment Standards ("the Director") and Communication, Energy and Paperworkers Union of Canada, Local 132 ("the union" or "CEP") representing the responding party Arthur Jessop, insist must be read conjunctively.

4. Subsection 80(4) of the Act reads:

> **80.** (4) This Part does not apply with respect to directors of corporations,
>
> (a) that have been incorporated in another jurisdiction;
>
> (b) that have objects that are similar to the objects of corporations to which Part III of the *Corporations Act* applies or to which the *Co-operative Corporations Act* applies; and
>
> (c) that are carried on without the purpose of gain.

5. The applicant's disjunctive interpretation of paragraph (a) of subsection 80(4) would exempt Mr. Pensler as a director in respect of an order to pay because Korex was incorporated in a jurisdiction other than Ontario. However, if paragraph (a) is read conjunctively with paragraphs (b) and (c) as urged by the Director and the union, the applicant is liable for the amounts ordered by the Officer.

6. The parties argued their respective positions based solely upon the following agreed statement of facts:

> 1. Korex Don Valley ULC ("Korex") is incorporated pursuant to the laws of the Province of Nova Scotia.
>
> 2. Korex was in the business of manufacturing and packaging detergents, cleaners and soaps.
>
> 3. During the relevant time period, Korex employed up to 330 employees.
>
> 4. On August 11, 2009, Korex made an assignment into bankruptcy.
>
> 5. S. Funtig & Associates Inc. was appointed as Trustee and as receiver of the property, undertakings and assets of Korex.
>
> 6. Sanford Pensler was a Director of Korex for the relevant time period.
>
> 7. On April 15, 2010, the Ministry of Labour issued an Order to Pay against Sanford Pensler in the amount of $515,349.95.
>
> 8. On March 24, 2011, the Honourable Mr. Justice Wilton-Siegel endorsed that there were no assets available for distribution to unsecured creditors of Korex.
>
> 9. The Order to Pay was for wages due to former employees of Korex. The former employees of Korex are unsecured creditors of Korex.
>
> 10. The following exhitis [sic] are entered on consent:
>
>   (1) Box of Documents – Tabs 1 – 7
>
>   (2) Supplemental Book of Documents Tab 1 – 3
>
> 11. The parties agree that the sole issue to be determined is the interpretation of Section 80(4) of the Employment Standards Act. The parties agree that the Order to Pay is otherwise correct.

7. I note that, although the agreed statement of facts does not say so expressly, there was no dispute that the responding party employees worked in Ontario at the relevant time.

Analysis and Conclusion

8. The applicant's argument rests upon two pillars: (i) the decision of the Ontario Superior Court in *Stoody v. Westsun Show Systems Inc.*, [2003] O.J. No. 4542 ("*Westsun Show*") and the decision of the Ontario Court of Appeal, upholding the Superior Court decision, in *Stoody v. Kennedy*, [2005] O.J. No. 1049; and (ii) the interpretation of the word, "and" as set out in the text by Ruth Sullivan in *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis Canada Inc., 2008).

9. *Westsun Show* involved an action by Mr. Stoody against two officers of Westsun Show, against which he had obtained an earlier judgment for unpaid wages and wrongful dismissal, and several officers and directors of Westsun International, the parent company of Westsun Show. Both companies were incorporated in Manitoba. Mr. Stoody worked for Westsun Show out of an office in Ontario. Mr. Stoody obtained the judgment against Westsun Show on April 2, 2002 in respect of wrongful dismissal and unpaid commissions and wages in lieu of notice. He made no effort to collect on the judgment. On May 28, 2002, Westsun Show was placed in receivership. Rather than submit a claim in the receivership, Mr. Stoody filed suit against two officers of Westsun Show and all the directors and certain officers of Westsun International to make good on the judgment.

10. In *Westsun Show*, the Superior Court was faced with several issues for determination, among them, whether Westsun International was a common employer with Westsun Show of Mr. Stoody; whether the officers/directors were liable to him for the unpaid wages portion of the judgment; and whether the officers/directors were liable to him for oppression or as a result of committing some other independent tort.

11. The Superior Court found, among other things, that Westsun Show and Westsun International were common employers, and that five directors of Westsun International were found liable to Mr. Stoody for all of his unpaid commissions under Manitoba's corporate law statute. However, the Manitoba statute did not extend to liability for wages in lieu of notice. The Superior Court then considered the application of subsection 80(4) of the Act, and at paragraph 36 stated:

> **36** It is clear from s.80 (4) of the Employment Standards Act, S.O. 2000, c.41 that directors' liability for wages under that Act does not apply to directors of corporations incorporated in Manitoba. This Court does not have the jurisdiction to enforce directors' liability for wages under either the Ontario Employment Standards Act or the Manitoba Employment Standards Code, C.C.S.M. c.E1 10. The avenue to make a wage claim under both of these Acts is through an employment standards officer rather than through the courts. (Susan Shoe Industries Ltd. v. Ricciardi, [1994] O.J. No. 1093 (C.A.); Hine v. Susan Shoe Industries Ltd., [1989] O.J. No. 2202 (H.C.J.); Thiessen v. Carriere Toyota NWT Ltd., [1995] N.W.T.J. No. 59 (S.C.)

12. The *Stoody v. Kennedy* case involved a number of appeals and cross-appeals from the decision in *Westsun Show*. It is unnecessary to describe them all in detail. Suffice it to say that one of the appeals was by the five directors of Westsun International, and they prevailed in their appeal based on the Court of Appeal's reading of the *Manitoba Corporations Act*. Mr. Stoody's cross-appeal involved a claim against Robert Davidson, an individual who had been an officer of Westsun International and who became a director of Westsun Show after Mr. Stoody was terminated. At the Court of Appeal, Mr. Stoody argued, and the Court of Appeal rejected, that Mr. Davidson breached his duty as an officer and director and was liable as a result of that breach. In the alternative, Mr. Stoody submitted that Mr. Davidson was liable for wages pursuant to employment standards legislation. In rejecting that submission, and in expressing its approval of the Superior Court's statement outlined in the preceding paragraph, the Court of Appeal said the following about subsection 80(4) of the Act:

> **62** ... Section 80(4) (a) of the Employment Standards Act, S.O. 2000, c. 41 provides that Part XX, Liability of Directors, does not apply to directors of corporations "that have been incorporated in another jurisdiction". Since both

> Westsun Show and Westsun International were incorporated under Manitoba legislation, Mr. Stoody's claim could not succeed under the Ontario legislation. In light of these considerations, there is no need to address the other barrier to such a claim based on the lack of jurisdiction of Ontario courts to enforce the provisions of either Manitoba or Ontario employment standards legislation.

13. The applicant submits that in upholding the Superior Court's finding in Westsun Show, the Court of Appeal confirmed that the appropriate way to interpret and apply Part XX of the Act is to read subsection 80(4)(a), (b) and (c) disjunctively. Moreover, the applicant submits that the Court of Appeal's conclusion is binding upon the Board. I do not accept either submission.

14. The Court of Appeal in *Stoody* v. *Kennedy* did not conclude that paragraphs (a), (b) and (c) of subsection 80(4) are to be read disjunctively. The Court of Appeal never turned its mind to that proposition. It appears from the decision that, indeed, the Court of Appeal looked at paragraph (a) of subsection 80(4), without regard to paragraphs (b) and (c), or for that matter, without considering any other provision in Part XX of the Act, and drew the conclusion that, because Westsun Show and Westsun International were incorporated under Manitoba law, no director of either corporation could be found liable to Mr. Stoody pursuant to the Ontario legislation. It is implicit in the Court of Appeal's two-sentence analysis that it read paragraph (a) in a disjunctive manner. The applicant says that this is an expression of a considered opinion by a Court with appellate jurisdiction over the Board on a point of law concerning the appropriate way to interpret subsection 80(4) as a whole. I disagree. There is nothing in the Court's decision suggesting that the parties tendered any argument about whether to read the subsection conjunctively or disjunctively, and certainly nothing in the Court's reasons that the Court thought about that issue. In my view, the Court did not express an opinion, much less a considered opinion, on a point of law that subsection 80(4) is to be read disjunctively. That issue was simply not squarely addressed by the Court of Appeal in *Stoody v. Kennedy*. The Court's decision, therefore, does not bind me to find that the constituent subparagraphs of subsection 80(4) need be read disjunctively.

15. The applicant next submits that the word "and" in subsection 80(4) is used jointly and severally, and relies on *Sullivan on the Construction of Statutes*, *supra*, pages 81 to 84. Having reviewed that excerpt, I do not agree that that is the conclusion to be drawn. I take from the excerpt that, generally, "and" is *presumptively* to be read jointly and severally, but that the presumption is readily rebuttable.

16. The provisions of the Act relevant for the purposes of this dispute are sections 3(1), 79, 80 and parts of section 81. They read:

> **3.** (1) Subject to subsections (2) to (5), the employment standards set out in this Act apply with respect to an employee and his or her employer if,
>
> (a) the employee's work is to be performed in Ontario; or
>
> (b) the employee's work is to be performed in Ontario and outside Ontario but the work performed outside Ontario is a continuation of work performed in Ontario.
>
> ...
>
> PART XX
> LIABILITY OF DIRECTORS

Definition

79. In this Part,
"director" means a director of a corporation and includes a shareholder who is a party to a unanimous shareholder agreement.

80. (1) This Part applies with respect to shareholders described in section 79 only to the extent that the directors are relieved, under subsection 108(5) of the *Business Corporations Act* or subsection 146(5) of the *Canada Business Corporations Act*, of their liability to pay wages to the employees of the corporation.

(2) This Part does not apply with respect to directors of corporations to which Part III of the *Corporations Act* applies or to which the *Co-operative Corporations Act* applies.

(3) This Part does not apply with respect to directors, or persons who perform functions similar to those of a director, of a college of a health profession or a group of health professions that is established or continued under an Act of the Legislature.

(4) This Part does not apply with respect to directors of corporations,

(a) that have been incorporated in another jurisdiction;

(b) that have objects that are similar to the objects of corporations to which Part III of the *Corporations Act* applies or to which the *Co-operative Corporations Act* applies; and

(c) that are carried on without the purpose of gain.

. . .

81. (1) The directors of an employer are jointly and severally liable for wages as provided in this Part if,

(a) the employer is insolvent, the employee has caused a claim for unpaid wages to be filed with the receiver appointed by a court with respect to the employer or with the employer's trustee in bankruptcy and the claim has not been paid;

(b) an employment standards officer has made an order that the employer is liable for wages, unless the amount set out in the order has been paid or the employer has applied to have it reviewed;

(c) an employment standards officer has made an order that a director is liable for wages, unless the amount set out in the order has been paid or the employer or the director has applied to have it reviewed; or

(d) the Board has issued, amended or affirmed an order under section 119, the order, as issued, amended or affirmed, requires the

> employer or the directors to pay wages and the amount set out in the order has not been paid.
>
> (2) Despite subsection (1), the employer is primarily responsible for an employee's wages but proceedings against the employer under this Act do not have to be exhausted before proceedings may be commenced to collect wages from directors under this Part.
>
> (3) The wages that directors are liable for under this Part are wages, not including termination pay and severance pay as they are provided for under this Act or an employment contract and not including amounts that are deemed to be wages under this Act.
>
> ...
>
> (7) The directors of an employer corporation are jointly and severally liable to the employees of the corporation for all debts not exceeding six months' wages, as described in subsection (3), that become payable while they are directors for services performed for the corporation and for the vacation pay accrued while they are directors for not more than 12 months under this Act and the regulations made under it or under any collective agreement made by the corporation.
>
> ...

17. In *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, the Supreme Court of Canada was faced with the interpretation of the notice of termination and severance provisions of the Act as it then was. The employees in that matter were terminated, not by the employer, but pursuant to a receiving order issued as a result of the issue of a petition in bankruptcy brought against the employer. The Ontario Court of Appeal ruled that the language of the statutory provisions at issue limited the obligations to pay termination pay and severance pay to situations in which the employer terminates the employment. The Supreme Court of Canada disagreed with the narrow statutory interpretation of the Court of Appeal. At paragraphs 21 and 22, Iacobucci J., writing for the Court, stated:

> **21** Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, Statutory Interpretation (1997); Ruth Sullivan, Driedger on the Construction of Statutes (3rd ed. 1994) (hereinafter "Construction of Statutes"); Pierre-André Côté, The Interpretation of Legislation in Canada (2nd ed. 1991)), Elmer Driedger in Construction of Statutes (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
>> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Recent cases which have cited the above passage with approval include: R. v. Hydro-Québec, [1997] 3 S.C.R. 213; Royal Bank of Canada v. Sparrow Electric Corp., [1997] 1 S.C.R. 411; Verdun v. Toronto-Dominion Bank, [1996] 3 S.C.R. 550; Friesen v. Canada, [1995] 3 S.C.R. 103.

> **22** I also rely upon s. 10 of the Interpretation Act, R.S.O. 1980, c. 219, which provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

18. Section 64(1) of the *Legislation Act, 2006* S.O. 2006, c. 21 states that "[a]n Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects." The Act is remedial legislation designed to benefit employees by providing to them minimum protections and entitlements. The purpose of the Act is not to protect directors. In fact, the Act makes directors of an employer jointly and severally liable for unpaid wages in certain circumstances The applicant's interpretation of subsection 80(4) would limit employee recovery from directors in circumstances where the companies with whom directors are associated are incorporated outside of Ontario. The conjunctive interpretation of subsection 80(4), on the other hand, would deny employee recovery for unpaid wages only from directors of non-profit corporations incorporated outside of Ontario, just as the Act in subsection 80(2) denies employee claims against directors of non-profit corporations incorporated within Ontario. The conjunctive interpretation would have the effect of immunizing directors of for-profit corporations not incorporated within Ontario, while directors of for-profit companies incorporated under Ontario law are exposed to liability. In theory, a business wishing to operate in Ontario could incorporate under the law of another jurisdiction and thereby shield its directors from liability under the Act. That is in itself a good reason not to adopt the applicant's interpretation, because it is not consistent with a large and liberal interpretation that best attains the Act's object to protect employees and provide minimum entitlements. It leaves Ontario employees exposed to the possibility they will not recover unpaid wages from directors merely because of the jurisdiction under which their companies were incorporated.

19. In my view, the applicant's interpretation of "and" in subsection 80(4) not only fails to align with the purposes of the Act, but is not in harmony with other provisions of the Act, including Part XX. First of all, subsection 3(1) of the Act provides that the statute's employment standards apply (with certain exceptions that are not applicable in this case) to an employee and his employer if the employee's work is to be performed in Ontario.[1] The location of the employer or the jurisdiction under which the employer may be incorporated is irrelevant for purposes of the subsection. The factor which determines the applicability of the Act to the workplace parties is where the employee performs the work. In this case, the employees performed all their work in Ontario. Had the order to pay issued against their employer, there is no provision under the Act of which I am aware that would have exempted the corporation from liability to pay the unpaid wages which are the subject of the order to pay in this matter. A disjunctive reading of subsection 80(4)(a) undermines the general scheme of the Act by exempting directors (but not their corporations) from liability for unpaid wages solely on the basis that the corporation was incorporated outside of Ontario.

20. The applicant's disjunctive interpretation of subsection 80(4) also is not consistent with other provisions of Part XX. Notably, the applicant's interpretation leads to a redundancy as between subsections 80(2), on one hand, and 80(4)(b) and (c) on the other. Subsection 80(2) is concerned with an exemption for directors of corporations to which Part III of the *Corporations Act* or to which the

---

[1] It also applies where the work is performed by the employee in Ontario and outside of Ontario so long as the extra-Ontario work is a continuation of the work performed in Ontario.

Co-operative Corporations Act apply. Both are statutes enacted by the Ontario Legislature. Part III of the *Corporations Act* applies to corporations without share capital. Part III corporations generally are prohibited from seeking any gain for its members or profits for the business. Corporations under the *Co-operative Corporations Act* must operate as nearly as possible at cost. In other words, these statutes apply to the directors of companies incorporated in Ontario as non-profit corporations. Subsection 80(2) immunizes directors of non-profit corporations from liability under the Act. (Similarly, subsection 80(3) exempts directors of colleges or groups of health professions.) Clearly, Korex was not such a corporation. If subsection 80(4)(b) and (c) are to be read disjunctively, as the applicant urges, there would be no need to include subsection 80(2). But when subsections 80(4)(b) and (c) are read conjunctively, with paragraph (a), it becomes obvious that what the Legislature intended was not to duplicate subsection 80(2), but rather to create a parallel exemption to the one contained in subsection 80(2), for directors of non-profit corporations incorporated outside of Ontario. Such an interpretation accords with the scheme of the Act and with its objects.

21. The interpretation of subsection 80(4) argued by the CEP and by the Director also is consistent with the Board's decision in *Michael Fascia and Bruno Maruzzo* 2005 Can LII 13969 (ON L.R.B.). In that matter the two applicants were directors of a corporation which was incorporated in British Columbia. For reasons very similar to those articulated in this decision, the Board rejected the submissions of the applicant Fascia that the subparagraphs of subsection 80(4) should be read disjunctively. The decision in the *Fascia* case took note of the Superior Court's decision in *Westsun Show*, and characterized the Court's comments concerning subsection 80(4)(a) as *obiter*. The Board apparently was not aware of the Court of Appeal's decision in *Stoody v. Kennedy*. Nevertheless, in my view the Board in the *Fascia* case, as in this matter, was required to resolve a different legal question than that which was resolved by the Court of Appeal. In my view, the issue before the Board in *Fascia* case was correctly decided. Although I am not bound by other decisions of the Board, I am persuaded there is no reason in this matter to come to a conclusion different from that reached in the *Fascia* case.

22. For the reasons stated, paragraphs (a), and (b) and (c) of subsection 80(4) are to be read conjunctively, not disjunctively. On such a reading, the applicant is not exempt from liability for unpaid wages.

23. There was no issue regarding the quantum of the Order to Pay.

24. Pursuant to subsection 119(7)(a), Order to Pay No. 39444 is hereby affirmed.

25. The application is dismissed.

2841-09-HS Zephyr Peat Land Harvesting, Applicant v. James Milne, Inspector, Responding Party

Health and Safety – The employer appealed an order from a health and safety inspector requiring it to comply with the training programs for surface mine operations – The employer grows, harvests and processes sedge-grass peat – The employer and the Ministry were at odds regarding the compass of the definition of "surface mine" – The Board found that the

operation of the employer had no relation to the supply of material for construction, industrial or manufacturing purposes, therefore it could not be captured by the impugned definition – Appeal allowed; orders rescinded

BEFORE: *Lee Shouldice*, Vice-Chair.

APPEARANCES: *Norm Keith, Cathy Chandler* and *Bruce Blacktopp* for the applicant; *David R. McCaskill, James Milne* and *Ron Kennedy* for the responding party.

DECISION OF THE BOARD: May 4, 2011

1. This is an application filed with the Board pursuant to subsection 61(1) of the *Occupational Health and Safety Act,* R.S.O. 1990, c. O.1, as amended (the "Act"). The applicant ("Zephyr") requests that Orders No. 2 and 3 issued by Inspector James Milne in Field Visit No. 5984612 on November 27, 2009 be rescinded.

2. Zephyr grows organic sedge-grass peat on 250 acres of property located on Concession Road 4 in the Township of Uxbridge, Ontario. It transports the peat to a processing warehouse located in Mount Albert, Ontario, where it processes, cleans and bags the peat. On November 27, 2009, Inspector Milne attended at the processing warehouse to conduct a routine inspection. As a result of his inspection of that warehouse Inspector Milne issued six orders, including Orders No. 2 and 3, the two orders that are the subject of this appeal.

3. Orders No. 2 and 3 provide as follows:

> **Order No. 2**
>
> Employers engaged in surface mine operations shall establish and maintain the following training programs: 1. Modular Training Standards Surface Miner (Program #770210) Common Core Modules U5030, U5031, U5032. 2. Modular Training Standards Surface Miner (Program #770210) Specialty Modules.
>
> At the time of the inspection the workers involved in the peat excavation operation did not have the required Surface Miner Common Core or Specialty Module Training. The Employer shall ensure that the workers operating in the mine site have the required training. This order is attached to a compliance plan order whereby the employer shall furnish this inspector with a plan as to when compliance will be achieved. This compliance plan shall be forwarded to this inspector by Friday 18th December 09.
>
> **Order No. 3**
>
> A provision of this Act or the regulations is being contravened, the constructor, licensee or an employer shall submit to the Ministry a compliance plan prepared in the manner and including such items as required by the order. The compliance plan shall specify what the constructor, licensee or employer plans to do to comply with the order and when the constructor, licensee or employer intends to achieve compliance.

> A plan outlining when compliance will be achieved shall be forwarded to this inspector by Friday 18th December 09.

Order No. 2 was issued pursuant to subsection 11.2(1) of the regulation pertaining to Mines and Mining Plants, R.R.O. 1990, Regulation 854 (the "Mining Regulation"). Subsection 11.2(1) of the Mining Regulation applies to employers engaged in "surface mine operations". Order No. 2 states that Zephyr failed to provide its employees with Surface Miner Common Core or Specialty Module training as required by the Mining Regulation. Order No. 3 was issued pursuant to subsection 57(4) of the Act. It requires Zephyr to provide to the Ministry of Labour ("the Ministry") a compliance plan for completion of Surface Miner Common Core and Specialty Module training.

4. Although the parties made reference during the course of evidence and argument to the definition of the terms "mine" and "mining plant" found in subsection 1(1) of the Act, those definitions do not have any real relevance to the disposition of this proceeding. Subsection 70(1) of the Act states that the Lieutenant Governor in Council may make such regulations as are advisable for the health or safety of persons in or about a workplace. Subsection 70(2)31 of the Act states that, without limiting the generality of subsection 70(1) of the Act, regulations may be made prescribing training programs that employers shall provide. Accordingly, the Mining Regulation is authorized by subsection 70(1) of the Act, and subsection 11.2(1) of that regulation is specifically authorized by subsection 70(2)31 of the Act.

5. Subsection 11.2(1) of the Mining Regulation establishes training programs for "surface mine operations". Whether the peat operation of Zephyr is encompassed within the meaning of the term "surface mine" is therefore the critical consideration in this proceeding. That term is defined in section 1 of the Mining Regulation as follows:

> "surface mine" means a pit or quarry where metallic or non-metallic rock, mineral-bearing substance, earth, clay, sand or gravel is being or has been removed by means of an excavation open to the surface to supply material for construction, industrial or manufacturing purposes and includes any work, undertaking or facility used in connection therewith but does not include a cutting for a right of way for a highway or a railroad.

6. Evidence was called regarding the peat operation of Zephyr through its owner, Mr. Bruce Blacktopp. Zephyr also called expert evidence regarding the nature of peat through Mr. Tom Young, a Terrestrial Biologist/Agrologist. Counsel for the Ministry called Inspector Milne to give evidence. Very brief testimony was also offered through Mr. Ron Kennedy, a Mining Consultant employed by the Ministry.

7. Ultimately, this proceeding can be determined without reference to much of the evidence called and argument made by the parties. For the purposes of this decision, I am prepared to assume that peat is "earth" as is asserted by the Ministry. I note here that this assertion is vehemently disputed by Zephyr.

8. The relevant evidence establishes that the material obtained by Zephyr from its bog in the Township of Uxbridge is a type of herbaceous peat moss. To secure the peat from its property, Zephyr utilizes one or more of its two excavators, three bulldozers/groomers, three front-end loaders and ten trucks. Mr. Blacktopp estimated that six of Zephyr's employees would operate various pieces of its heavy equipment in any given season.

9. Mr. Blacktopp testified that the peat produced by Zephyr is sold for various uses. Approximately 90 percent of the peat produced by Zephyr is sold for use as a mushroom culture to assist in the growing of mushrooms for human consumption. Much of the remaining peat produced by Zephyr is sold for use in gardening as a growing media to build up soil. A small amount of peat is sold by Zephyr for use as pig feed and for use in the live bait industry, where it is used to transport dew worms that are shipped world-wide.

10. Zephyr argues that its operation does not fall within the definition of "surface mine" found in the Mining Regulation. The Ministry disagrees with the applicant's assertion. According to the Ministry, the argument made by Zephyr is "misguided" and "misapplies" the overriding principles of the Act. The Ministry asserts a number of times in its written submissions that it is the nature of the work performed that should determine the type of protection required to be provided to Zephyr employees working at its bog. The Ministry notes that the work undertaken and the equipment used by Zephyr at its bog are very similar to that performed and utilized, respectively, in a gravel pit operation. That similarity, it is argued, dictates the application of the Mining Regulation to the peat operation of Zephyr.

11. For the reasons that follow, I am of the view that this appeal should be allowed, and that Orders No. 2 and 3 issued by Inspector Milne should be rescinded.

12. The argument made by the Ministry relies far too much upon the significance of the overriding goal of the Act, namely the need to protect the health and safety of workers, as if that goal and its importance are sufficient in and of themselves to establish that Orders No. 2 and No. 3 properly apply to the peat operation of Zephyr. They are not. No one disputes that the purpose of the Act and its regulations is to protect the health and safety of workers in the workplace. That purpose, however, is not unlimited or unqualified. In this proceeding, it is limited by the words contained in the Mining Regulation. The language contained in the Mining Regulation must be considered.

13. In accordance with subsection 64(2) of the *Legislation Act, 2006*, S.O. 2006, c. 21, the relevant language contained in section 1 and subsection 11.2(1) of the Mining Regulation must be given such fair, large and liberal interpretation as will best ensure the attainment of its objects. However, interpreting the relevant language of the Mining Regulation in that manner does not assist the Ministry. The undisputed evidence establishes that there is no pit or quarry on the property of Zephyr at its peat bog located in the Township of Uxbridge. It also establishes that the vast majority of the peat produced by Zephyr is sold for use as a growing medium in the agricultural and horticultural industries. There is no evidence establishing that Zephyr removes peat from its property in order "to supply material for construction, industrial or manufacturing purposes".

14. With those facts established, it is evident that the Zephyr peat operation located in the Township of Uxbridge does not fall within the definition of "surface mine" found in the Mining Regulation. If the peat operation of Zephyr is not a "surface mine" for the purposes of that regulation, then Orders No. 2 and No. 3 were not within the authority of Inspector Milne to issue. If the Ministry desires peat producers such as Zephyr to be required to provide the Common Core and Specialty Module training required by the Mining Regulation, a further regulation, or an amendment to the current regulation, will have to be promulgated by the Lieutenant Governor in Council.

15. For the reasons outlined above, the application is allowed. In accordance with subsection 61(4) of the Act, Orders No. 2 and No. 3 made by Inspector Milne in Field Visit No. 5984612 on November 27, 2009 are rescinded.

COURT PROCEEDINGS

1048-07-HS; 0255-08-HS (Court File No. 373/09) Blue Mountain Resorts Limited -and- Richard Den Bok, The Ministry of Labour and the Ontario Labour Relations Board -and- Conservation Ontario

Health and Safety – Judicial Review – Blue Mountain sought review of a Board decision finding that the employer had violated the *Occupational Health and Safety Act* by failing to report the death of a guest who drowned in an unsupervised swimming pool at the resort – The Board had upheld the health and safety inspector's finding that a "person" included a guest and a "workplace" included the pool – On review, the Court agreed that the word "person" should be construed in its ordinary meaning and encompasses more than just workers – Conditions and hazards that result in the death of a non-worker could cause similar harm to workers – The Court held, however, that the Board's interpretation of "workplace" was unnecessarily broad and conflated the proprietary interests of the applicant with the statutory definition of workplace – Overall, the Board's decision was not unreasonable – Application dismissed

Superior Court of Justice (Divisional Court), J. Wilson, Swinton and Low JJ., May 18, 2011

LOW J.

[1] The applicant operates a resort comprising ski runs, an inn and other recreational facilities. The property covers some 750 acres. The business employs about 1,750 workers in peak season. It seeks judicial review of a decision of the Ontario Labour Relations Board ("the Board") dated March 23, 2009 which upheld, on appeal, an order of the respondent Richard Den Bok in his capacity as an inspector under the *Occupational Health and Safety Act, 1990*, R.S.O. c. O.1, as amended ("the Act").

[2] The order related to an occurrence at the applicant's premises in which a guest drowned on December 24, 2007, in the unsupervised swimming pool at the resort. The order was made pursuant to s. 51(1) of the Act and arose out of a field visit to the applicant's premises on March 27, 2008.

[3] Subsection 51(1) of the Act provides:

> 51. (1) Where a person is killed or critically injured from any cause at a workplace, the constructor, if any, and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone or other direct means and the employer shall, within forty-eight hours after the occurrence,

> send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe.

[4] The inspector concluded that a "person" included a guest, and that a "workplace" included an unsupervised swimming pool. The inspector's order was as follows (at para. 3):

> Where a person is killed or critically injured from any cause at a workplace, the constructor, if any, and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone, telegram or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe. THE EMPLOYER FAILED TO NOTIFY AN INSPECTOR OF THE FATAL INJURY TO A PERSON WHICH OCCURRED AT THE BLUE MOUNTAIN INN ON DECEMBER 24, 2007. COMPLY FORTHWITH.

[5] The applicant believed initially that the guest had suffered a heart attack but it subsequently learned that the guest had drowned. The applicant did not notify an inspector of the occurrence pursuant to s. 51(1) of the Act and did not send to the Director a written report of the circumstances of the occurrence. It was of the view that because the person who drowned was not a worker, the provisions of s. 51(1) of the Act did not apply.

[6] The Board upheld the inspector's order.

[7] The two issues before the Board in deciding the applicant's appeal were whether the word "person" in s. 51(1) means "worker" and whether the unsupervised swimming pool in which the guest drowned was a "workplace" within the meaning of the Act.

[8] "Person" is not defined in the Act.

[9] "Workplace" is defined in s. 1 as follows:

> "workplace" means any land, premises, location or thing at, upon, in or near which a worker works. ("lieu de travail")

[10] The Board considered the legislative context, the purposes of the Act as set out in *R. v. Timminco Ltd.*, 2001 CanLII 3494 (ON CA), [2001] O.J. No. 1443; 54 O.R. (3d) 21 (C.A.) and *Ontario (Ministry of Labour) v. Hamilton (City)*,2002 CanLII 16893 (ON CA), [2002] O.J. No. 283; 58 O.R. (3d) 37 (C.A.) and the uses of the words "person" and "worker" in different parts of the Act. The Board concluded that the word "person" in s. 51(1) is to be construed in its ordinary meaning and not as synonymous with the word "worker", which is defined in s. 1 of the legislation as

> a person who performs work or supplies services for monetary compensation but does not include an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program.

[11] With respect to whether the guest drowned in a "workplace", the Board found the following:

> 75. Blue Mountain is a fixed workplace. There is a fixed location to which employees regularly report. There is a defined area that encompasses a ski hill, buildings, parking lots, a swimming pool etc. from which Blue Mountain operates its resort. Employees of Blue Mountain move about performing work functions within all or a part of this area on a daily basis. The area of the resort where the Blue Mountain employees perform their work functions is a "workplace" for the purposes of section 51(1) of the Act. The fact that an employee is not physically present within a section of that "workplace" does not mean that that particular section is not part of the "workplace" during the period when no employees are present.
>
> 76. I heard no evidence as to the work done by employees of Blue Mountain within the enclosed area of the indoor swimming pool where the guest drowned. I heard no evidence as to how regularly employees go into this area, what they do in the area or how many employees enter this area. However, Blue Mountain did not contest the Ministry's assertion that Blue Mountain employees enter the pool area and did not suggest that persons who were not Blue Mountain employees looked after the pool. Based on general and common knowledge I infer that at least one and perhaps more Blue Mountain employees must enter the enclosed area of the indoor swimming pool in order to clean the pool and check the water at least once, and likely more times, each day. The swimming pool thus comprises a part of at least one Blue Mountain employee's workplace. It does not cease to be a "workplace" because the employee in question moves from that area of his or her workplace to another area of the same workplace.
>
> 77. Blue Mountain did not argue that the guest who drowned in the swimming pool had not suffered a critical injury. Although Blue Mountain initially believed the guest had died of natural causes, it subsequently learned that the guest had drowned.
>
> 78. For the reasons set out above, I find that the drowning of a guest in the Blue Mountain swimming pool on December 24, 2007 triggered the reporting obligation under subsection 51(1) of the Act, as it involved a "person" who was killed from any cause at a "workplace" ….

[12] The standard of review on this application is one of reasonableness. The Board is an expert tribunal exercising its powers of decision in the administration of a statute within its area of responsibility (and see also *Lennox Drum Ltd. v. Ah-Home*, 2010 ONSC 4424 (CanLII) (Div. Ct.)).

[13] As to the Board's construction of the word "person", the applicant does not challenge the Board's determination that the word is to be given its plain, ordinary and inclusive meaning. The intervenor, Conservation Ontario, argued that the word "person" should be construed as meaning "worker".

[14] The applicant and the intervenor raise concerns about the practical application of the reporting requirement flowing from the interpretation of the meaning of "workplace" to include all 750 acres of the entire resort.

[15] The obligation created by s. 51(1) upon employers to report when a person is killed or critically injured is driven by result rather than by causation. Hence on a plain reading of the subsection, any event resulting in death or critical injury, even if occurring in circumstances having no potential nexus with worker safety, is reportable so long as they occur in a workplace. For purposes of triggering the reporting obligation and ensuring a sufficient reach to deal with incidents having a possibility of genesis in working conditions, the subsection as interpreted by the Board has a potential to reach beyond the ambit of the purposes of the statute.

[16] The intention to cast a very wide net to ensure that all circumstances resulting in death or critical injury at a workplace are brought to the Ministry's attention is apparent elsewhere in the Act. For example, s. 8(14) provides:

> (14) Where a person is killed or critically injured at a workplace from any cause, the health and safety representative may, subject to subsection 51(2), inspect the place where the accident occurred and any machine, device or thing, and shall report his or her findings in writing to a Director. [Emphasis added.]

[17] The applicant did not challenge in argument the Board's construction of the word "person" as unreasonable. We are of the view that the Board's logic in arriving at that conclusion was transparent, intelligible and justified in light of the total context of the legislation's purposes and the language used to implement those purposes. Nor does it lead to a result that is absurd. Conditions and hazards that result in the death or critical injury of a non-worker have the potential to cause similar harm to workers. The reporting obligation serves to enhance the protection of workers by bringing hazards to the attention of the Ministry whereas an absence of a reporting obligation would lead to a diminished oversight and potentially less worker safety.

[18] The focus of this application for judicial review is the meaning of "workplace". The manner in which the word "workplace" is to be construed in s. 1 and s. 51(1) raises the same question of the extent of the Act's reach.

[19] The applicant's position is that the construction of the word "workplace" adopted by the Board leads to an absurd result. The Board held, at paragraph 75, that Blue Mountain is a fixed workplace. Blue Mountain is both a place where some 1,750 individuals work at its peak season and a place of recreation for many thousands of holiday makers, including skiers in winter and mountain bikers at other times of the year.

[20] The applicant is concerned with the potential for serious disruption to its operations if "person" is construed in its ordinary meaning and "workplace" is defined as the whole of the resort. "Critical injuries" are defined broadly in the regulations to include the fracture of an arm or leg (R.R.O. 1990, Reg. 834, s.1). Because the very nature of skiing is such that injuries, some of them critical as defined in the Act, are an expected and not-infrequent by-product of the activity, a definition of workplace as comprising all of Blue Mountain would, it is argued, result in serious disruption of the resort's operations by reason of the language of s. 51(2) which provides:

> (2) Where a person is killed or is critically injured at a workplace, no person shall, except for the purpose of,
>
> (a) saving life or relieving human suffering;

> (b) maintaining an essential public utility service or a public transportation system; or
>
> (c) preventing unnecessary damage to equipment or other property,
>
> interfere with, disturb, destroy, alter or carry away any wreckage, article or thing at the scene of or connected with the occurrence until permission so to do has been given by an inspector. [Emphasis added.]

[21] The applicant argues that s. 51(2) requires preservation of the scene of the occurrence and that mischief will ensue because doing so may cause perils to other users of the premises while awaiting permission from the Ministry and because there will be significant disruption to the operation of the recreational facility.

[22] The applicant argues as well, based on the Board's statement at paragraph 75 of the decision, that subject to the statutory exceptions in the Act and premises covered by other legislation, virtually all places are "workplaces" with the result that the Ministry of Labour will have expanded its reach to realms of activity that are completely unrelated to worker health and safety.

[23] Accordingly, it is argued that such a result does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law as described in *Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), [2008] 1 S.C.R. 190 at para 47.

[24] More specifically, the applicant argues that the Board ought to have given recognition to the fact that the applicant's facilities are dual use premises – they are both recreational premises and a workplace and the use may change depending on the circumstances. A guest may experience a critical injury or be killed while engaged in a recreational activity on the premises in circumstances which do not pose a risk to a worker.

[25] The applicant's position as to the proper construction of the term "workplace" is one which requires the physical presence of a worker at a place where a worker works at the time at which an occurrence with a guest or other person takes place. More specifically, in the instant case, it is the applicant's position that the swimming pool would have been a workplace had an employee of the applicant been on site going about his work at the time of the guest drowning, but no employee being present and working at the time, the swimming pool was not a workplace when the occurrence took place. Therefore, the applicant argues, there was no reporting obligation in the facts of this case.

[26] There are significant logical flaws in the applicant's argument. The focus is entirely temporal and does not take into account the causative nexus between prevailing conditions and the resulting harm. For example, had the swimmer been critically injured by a structural fault in the pool area, it could hardly be argued that the circumstances ought not to attract the attention of the Ministry and thus the reporting obligation. Workers and guests are vulnerable to the same hazards. The purposes and intents of the legislation would be undermined if a physical hazard with potential to harm workers and non-workers alike was not subject to reporting and oversight.

[27] We are of the view that the language of the definition of "workplace" does not reasonably admit the construction proposed by the applicant. In our view, had the Legislature intended the construction advanced by the applicant, the definition of workplace would not be "any land, premises,

location or thing at, upon, in or near which a worker works" but rather "any land…at, upon, in or near which a worker is working". [Emphasis added.]

[28] In our view, the applicant's suggested construction is neither consonant with the language of the definition nor with the purposes of the legislation.

[29] That said, we are not persuaded that the Board reasonably concluded that the whole of the Blue Mountain Resort is a workplace. Such a finding conflates, in our view, the proprietary interests of the applicant in the 750 acres of property with the statutory definition of "workplace" and it goes significantly farther than was necessary for purposes of disposing of the appeal. Each case must be determined on its own facts.

[30] In this case, the guest drowned in the resort swimming pool. It is common ground that the swimming pool is a place where one or more workers work. For these reasons, the absence of a worker at the swimming pool premises at the time of the occurrence does not diminish the fact that it is a workplace, and we are not persuaded that the conclusion reached by the Board was unreasonable.

[31] Argument was directed to the spectre of disruption of the applicant's operations and of services provided to the public by members of the intervenor if this court were to uphold the Board's holding that "person" means person and "workplace" does not import physical presence of a worker at the time of an occurrence of death or critical injury. Such disruption is said to flow from an obligation under s. 51(2) to preserve the scene of the occurrence. It is suggested that there will be great disruption because the properties operated by the applicant and the intervenor are recreational in nature and attract vast numbers of users who are not workers and who suffer critical injuries in their recreational use of the properties. It is argued that a reporting obligation of such injuries does not advance the purposes of the Act and overexpands the reach of the Ministry of Labour.

[32] There was no issue before the Board as to whether there had been a failure to comply with s. 51(2) and, in our view, the Board correctly declined to deal with this issue.

[33] We are of the view that the Board's decision with respect to the obligation to report the swimming pool death was not unreasonable and accordingly dismiss the application.

[34] The parties are agreed that as this application raises a novel issue, there should be no costs.

0870-09-U (Court File No. 494/10) Elzbieta Olszewska -and- Ontario Labour Relations Board, United Steel, Paper and Forestry, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 1998, and the Governing Council of the University of Toronto

Duty of Fair Representation – Judicial Review – The applicant sought judicial review of the Board's decision (and reconsideration) dismissing her s. 74 complaint – The Court found that the applicant was merging two issues: the university's decision to terminate her and the union's conduct in failing to adequately challenge the discharge – The Court held that the

Board's finding that the union met its statutory obligation was reasonable – Further, there was no denial of natural justice or procedural fairness – Application dismissed

Superior Court of Justice (Divisional Court), Jennings, Ferrier and Aston JJ., May 17, 2011

ASTON J. (ORALLY)

[1] This is an application for judicial review of the Ontario Labour Relation Board's decision dated February 11, 2010 and its reconsideration decision dated May 12, 2010, in which the Board found that the Union had not breached its obligation to represent the applicant fairly under s.74 of the *Labour Relations Act*, in not pursuing the applicant's grievance.

[2] Our task as a Court is to review the record before the Tribunal without regard to the fresh evidence in the applicant's lengthy affidavit of January 14, 2011.

[3] The parties agree that the applicable standard of review is reasonableness. The applicant conflates or confuses two separate matters: first, whether the University decision was justified and second, whether the Union acted arbitrarily in failing to adequately investigate the basis of the University's decision.

[4] The narrow issue for the Board was whether the Union violated s.74 of the *Labour Relations Act*. The Board's mandate did not extend to whether the University decision was justified. The applicant's real complaint is that the University's decision was unreasonable and not justified by evidence. However, she has reframed her objection to the merits of her layoff, and her subsequent dismissal, as a claim against her Union for not making an adequate challenge to the University's evidence. In the initial stages, the Union took up the applicant's cause and shared her suspicion about the University's motivation. However, the Union became persuaded by the evidence from the University that lack of funding was a genuine issue and that the grievance would fail.

[5] The Board specifically considered the applicant's position. See para. 37 of its Reasons. The Board recognized the Union's obligation to provide a satisfactory reason for not pursuing the applicant's grievance to arbitration, especially considering her long employment history and the serious personal consequences to her. See para. 43 of the Board's decision. The Board concluded that the Union had met its statutory obligation to the applicant and did not act "arbitrarily" within the meaning of the jurisprudence. See paras. 44 through 52 inclusive of the Reasons.

[6] There was evidence to support the Board's ultimate conclusion at paragraph 53. The Board did not misapprehend the evidence or ignore material evidence. It applied the correct legal test. The applicant has failed to demonstrate that the Board's decision is unreasonable, nor has the applicant established a denial of procedural fairness amounting to a denial of natural justice. First, the refusal to admit Dr. Trehub's affidavit was justified given the affiant's non-attendance and the late production. See also the additional reasons at para. 2 of the Board's decision. Second, Mr. Revich was at the hearing but was not called to give *viva voce* evidence and in any event, the applicant has failed to demonstrate how his written statement is relevant to the Union's conduct. Finally, the reconsideration decision is not an appeal process. The grant documents could have been adduced in the first instance.

[7] For these reasons, the application is dismissed. No award as to costs.

3279-08-ES (Court File No. 10-DC-1594) Todor Pandeliev -and- Ontario Labour Relations Board

Employment Standards – Judicial Review – The Court found the Board's conclusion that the applicant's employment was terminated for wilful disobedience was a reasonable one – Application Dismissed

Superior Court of Justice (Divisional Court), Hackland R.S.J., Ferrier and Bryant JJ., April 7, 2011

ENDORSEMENT

[1] The applicant raises a number of objections to the Board's decision. These are primarily of a factual nature. It is our view that the Board's decision was reasonable in its conclusion that the applicant's employment was terminated for willful disobedience, such that he was disentitled to termination pay under Reg. 288/01 of the *Employment Standards Act*.

[2] Accordingly the application for judicial review is dismissed. There will be no costs

CASE LISTINGS APRIL 2011

PAGE

1. Applications for Certification 117
2. First Agreement Direction 126
3. Applications for Declaration of Related Employer 126
4. Sale of a Business 126
5. Applications for Declaration Terminating Bargaining Rights 127
6. Applications for Declaration of Unlawful Strike 129
7. Applications Under the Ambulance Services Collective Bargaining 129
8. Complaints of Unfair Labour Practice 129
9. Jurisdictional Disputes 131
10. Employee Status 132
11. Complaints under the Occupational Health and Safety Act 132
12. Construction Industry Grievances 132
13. Appeals – Employment Standards Act 136
14. Appeals – Occupational Health and Safety Act 142
15. Public Sector Labour Relations Transition Act, 1997 142
16. Applications for Reconsideration of Board's Decision 142
17. Pay Equity Act 143
18. Appeal – Public Sector Compensation Restraint to Protect Public Services Act, 2010 143

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING APRIL 2011

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

0037-10-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 - Sprinkler Fitters of Ontario (Applicant) v. Royal Fire Protection Inc. (Respondent)

Unit: "all sprinkler fitters and sprinkler fitters' apprentices in the employ of Royal Fire Protection Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all sprinkler fitters and sprinkler fitters' apprentices in the employ of Royal Fire Protection Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

2186-10-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. TDS Sales & Marketing Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of TDS Sales & Marketing Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of TDS Sales & Marketing Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

3801-10-R: Construction Workers Local 52 affiliated with the Christian Labour Association of Canada (Applicant) v. Marnoch Electrical Services Inc. (Respondent)

Unit: "all journeymen electricians and apprentice electricians and construction labourers in the employ of Marnoch Electrical Services Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

3864-10-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. Starcrest Homes Ltd. and, 2212057 Ontario Inc. (Respondent)

Unit: "all journeymen roofers and apprentice roofers, assistant roofers and helpers in the employ of Starcrest Homes Ltd. and 2212057 Ontario Inc. in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

3948-10-R: The Restoration Council of Ontario (Applicant) v. A.A.F. Construction (Respondent)

Unit: "all carpenters and carpenters' apprentices and all masonry restoration employees in the employ of A.A.F. Construction in all sectors of the construction industry other than the industrial, commercial and institutional sector in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), save and except non-working foremen and persons above the rank of non working foreman" (4 employees in unit)

4232-10-R: Iron Workers District Council of Ontario (Applicant) v. Burnco Manufacturing Inc. (Respondent)

Unit: "all ironworkers and ironworkers~ apprentices in the employ of Burnco Manufacturing Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all ironworkers and ironworkers~.. apprentices in the employ of Burnco Manufacturing Inc. in all sectors of the construction industry in Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (2 employees in unit)

0002-11-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. USA Slide, Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of USA Slide, Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of USA Slide, Inc. in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

0043-11-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 2193844 Ontario Limited o/a Exterior Elements (Respondent)

Unit: "all roofers and roofers' apprentices in the employ of 2193844 Ontario Limited o/a Exterior Elements in all sectors of the construction industry in the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

0156-11-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Castleton Homes Ltd. (Respondent)

Unit: "all construction labourers in the employ of Castleton Homes Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Bargaining Agents Certified Subsequent to Vote

4037-10-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Brant ford (Respondent)

Unit: "all full-time and part-time custodians/caretakers/cleaners employed by The Corporation of the City of Brantford, save and except supervisors, persons above the rank of supervisor and those for whom another trade union holds bargaining rights" (14 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

4084-10-R: Ontario Public Service Employees Union (Applicant) v. West Toronto Community Legal Services (Respondent)

Unit: "all employees of West Toronto Community Legal Services in the City of Toronto, save and except members of the legal profession employed in their professional capacity and Executive Director" (6 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	2

4151-10-R: Ontario Public Service Employees Union (Applicant) v. Victorian Order of Nurses Canada, Ontario Branch, Grey-Bruce Site (Respondent)

Unit: "all employees of the supportive housing program of the Grey-Bruce Site of Victorian Order of Nurses Canada, Ontario Branch in the Counties of Grey and Bruce save and except supervisors/ coordinators and those above the rank of supervisor/coordinator and office and clerical employees" (37 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	35
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	34
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	22
Number of ballots marked against applicant	13
Number of ballots segregated and not counted	0

4222-10-R: Ontario Public Service Employees Union (Applicant) v. 776094 Ontario Inc. c.o.b. as Bridge Street Retirement Residence (Respondent)

Unit: "all employees of 776094 Ontario Inc. carrying on business as Bridge Street Retirement Residence in the City of Belleville, save and except supervisors and persons above the rank of supervisors and persons employed in a confidential capacity in matters relating to labour relations" (29 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	0

4286-10-R: Public Service Alliance of Canada (Applicant) v. University of Ontario Institute of Technology (Respondent)

Unit: "all employees of the University of Ontario Institute of Technology ("UOIT") employed in the City of Oshawa on sessional limited term contracts as Lecturers to teach one or more degree credit courses, save and except: i. Supervisors and those above the rank of supervisor ii. Employees who are members of another bargaining unit including those who teach (a) degree credit course(s) on overload iii. Core Faculty members who hold an administrative appointment iv. Employees who are hired on a definite or indefinite term appointment of one year or more including those who teach (a) degree credit course(s) on overload v. Post Doctoral Fellows who are engaged in teaching including those who teach (a) degree credit course(s) on overload vi. Persons who have retired from UOIT who held a Core Faculty appointment at UOIT prior to their retirement vii. Persons who are Visiting Professors to UOIT viii. Those persons who hold a Clinical Adjunct appointment to advise and monitor student teachers in their placements ix. Laboratory directors, instructors, tutors, demonstrators or clinical associates x. Those persons employed in a managerial or labour relations confidential capacity with respect to employees in this bargaining unit." (150 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	136
Number of persons who cast ballots	57
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	55
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	50
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	2

0005-11-R: Southwestern Ontario Health Care and Service Workers, Local 303 affiliated with Christian Labour Association of Canada (Applicant) v. Steeves & Rozema Enterprises c.o.b. as Residence on the Thames (Respondent) v. Canadian Union of Public Employees, Local 3701 (Intervener)

Unit: "all employees of Steeves & Rozema Enteprises Limited c.o.b. as Residence on the Thames in the City of Chatham, save and except Charge Nurse and supervisors, persons above the rank of Charge Nurse, Activity Director, Supervisor and Bookkeeper and Registered Practical Nurses" (35 employees in unit) (Having regard to the agreement of the parties.)

Number of names of persons on revised voters' list	34
Number of persons who cast ballots	30
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	28
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	24
Number of ballots marked in favour of intervener	5
Number of ballots segregated and not counted	1

0082-11-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Cobourg Retirement Community Inc. c.o.b. Palisade Gardens (Respondent)

Unit: "all employees of Cobourg Retirement Community Inc., c.o.b. as Palisade Gardens, in Cobourg, Ontario save and except supervisors and persons above the rank of supervisor, office and clerical staff, sales representatives, Activity Director, Director of Care, Maintenance Manager and employees in bargaining units for which any trade union held bargaining rights as of April 8, 2011" (13 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	1

0084-11-R: Canadian Office and Professional Employees Union Local 343 (Applicant) v. Momentum Credit Union Limited (Respondent)

Unit: "all employees employed by Momentum Credit Union Limited in the City of Hamilton, save and except the Executive Assistant as well as Managers and persons above the rank of Manager" (20 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	2

0093-11-R: Service Employees International Union Local 2 Brewery, General and Professional Workers Union (Applicant) v. Apollo 8 Maintenance Services Inc. (Respondent)

Unit: "all employees of Apollo 8 Maintenance Services Inc. working at 33 Bloor St East, in the City of Toronto, save and except supervisors and persons above the rank of supervisor" (11 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

0133-11-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. George Jeffrey Children's Centre (Respondent)

Unit: "all employees of George Jeffrey Children's Centre in the City of Thunder Bay, save and except Supervisors and persons above the rank of Supervisors and office and clerical staff." (21 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

0137-11-R: Service Employees International Union Local 1 Canada (Applicant) v. Kerry's Place Autism Services (Respondent)

Unit: "all employees of Kerry's Place Autism Services in the City of Toronto, save and except Managers, persons above the rank of manager, Resident Co-ordinators, Behavioural Therapists, Autism Consultants, and office and clerical staff (including Administrative Assistants) and persons employed in a confidential capacity in matters relating to labour relations" (100 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	135
Number of persons who cast ballots	101
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	96
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	87
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	5

Applications for Certification Dismissed Subsequent to Vote

1448-07-R: Labourers' International Union of North America, Ontario provincial District Council (OPDC) (Applicant) v. Birnam Excavating Ltd. (Respondent)

Unit: "all construction labourers in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all construction labourers in the employ of the responding party in all other sectors of the construction industry in the County of Lambton and the Counties of Oxford, Perth, Huron, Middlesex, Bruce, and Elgin, save and except non-working foremen and persons above the rank of non-working foreman" (12 employees in unit)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	0

0950-10-R: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Normac Kitchens Limited (Respondent) v. Universal Workers Union, L.I.U.N.A. Local 183 (Intervener)

Unit: "all carpenters and apprentice carpenters in the employ of Normac Kitchens Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	25
Number of ballots segregated and not counted	0

1325-10-R: Service Employees International Union Local 1 Canada (Applicant) v. ParaMed Home Health Care (Central North East District) (Respondent)

Unit: "all employees of ParaMed Home Health Care servicing out of the Scarborough Office at 3650 Victoria Park Avenue, Suite #202, Toronto, Ontario M2H 3P7, save and except, supervisors, persons above the rank of supervisor, office and clerical staff, co-ordinators and on-call coordinators." (240 employees in unit)

Number of names of persons on revised voters' list	229
Number of persons who cast ballots	229
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	182
Number of segregated ballots cast by persons whose names appear on voter's list	41
Number of segregated ballots cast by persons whose names do not appear on voters' list	6
Number of spoiled ballots	3
Number of ballots marked in favour of applicant	108
Number of ballots marked against applicant	112
Number of ballots segregated and not counted	6

3985-10-R: Ontario Federation of Health Care Workers, Labourers' International Union of North America, Local 1110 (Applicant) v. Paramed Home Health Care, Niagara-on-the-Lake (Respondent)

Unit: "all employees employed by Paramed Home Health Care, Niagara Falls at 509 Glendale Ave., Suite 200 in the City of Niagara-on-the-Lake, save and except office and clerical staff, supervisors, and those above the rank of supervisor." (450 employees in unit)

Number of names of persons on revised voters' list	439
Number of persons who cast ballots	279
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	272
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	6
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	81
Number of ballots marked against applicant	193
Number of ballots segregated and not counted	5

4057-10-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. TRW Canada Ltd. (Respondent)

Unit: "all employees of TRW Canada Ltd. in the town of Tillsonburg, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical, sales and engineering staff and students." (235 employees in unit)

Number of names of persons on revised voters' list	222
Number of persons who cast ballots	248
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	204
Number of segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names do not appear on voters' list	36
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	99
Number of ballots marked against applicant	104
Number of ballots segregated and not counted	8

0014-11-R: Ontario Federation of Health Care Workers, Labourers' International Union of North America, Local 1110 (Applicant) v. The Salvation Army The Honourable Ray & Helen Lawson Eventide Home (Respondent) v. Niagara Health Care & Service Workers Union Local 302, CLAC (Intervener)

Unit: "all employees of the Salvation Army The Honourable Ray and Helen Lawson Eventide Home at Niagara Falls, Ontario, save and except supervisors and those above the rank of supervisor, office and clerical staff." (105 employees in unit)

Number of names of persons on revised voters' list	106
Number of persons who cast ballots	90
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	89
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	44
Number of ballots marked in favour of intervener	44
Number of ballots segregated and not counted	0

0050-11-R: Ontario Nurses' Association (Applicant) v. Extendicare Halton Hills (Respondent)

Unit: "all Registered Nurses and Nurses with temporary Certificate of Registration employed in a nursing capacity by Extendicare Halton Hills in the Town of Georgetown save and except the Assistant Director of Care and persons above the Assistant Director of Care" (14 employees in unit)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	1

0125-11-R: Health Care and Service Workers Union Local 304 affiliated with the Christian Labour Association of Canada (Applicant) v. Grove Park Home for Senior Citizens (Respondent)

Unit: "all employees of Grove Park Home for Senior Citizens in Barrie, ON, save and except supervisors, persons above the rank of supervisor and office staff" (230 employees in unit)

Number of names of persons on revised voters' list	192
Number of persons who cast ballots	143
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	141
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	70
Number of ballots marked against applicant	71
Number of ballots segregated and not counted	2

Applications for Certification Withdrawn

0098-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Reitzel Bros. Holdings Inc., Reitzel Bros. Env ironmental and, Reitzel Bros. Asbestos Removal Ltd. (Respondent)

0676-09-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Tony Olsen Enterprises (Respondent)

1901-09-R; 1903-09-R: Ontario Workers' Union (Applicant) v. University Health Network/Princess Margaret Hospital (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

0724-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. ConCreate USL Ltd. (Respondent)

3802-10-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Structural Panel Industries Inc. (Respondent)

4173-10-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 2065870 Ontario Inc. o/a Superior Concrete Forming Inc. (Respondent) v. Construction Workers Local 6 affiliated with CLAC (Intervener)

0223-11-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Walden Day Care Centre Inc. (Respondent)

FIRST AGREEMENT - DIRECTION

0349-10-FC: Labourers' International Union of North America, Local 625 (Applicant) v. 1413600 Ontario Inc. d.b.a. Royalty Homes (Respondent) (Withdrawn)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

2799-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Reitzel Bros. Holdings Inc., Reitzel Bros. Environmental and, Reitzel Bros. Asbestos Removal Ltd., 1643389 Ontario Inc. o/a Envirocare (Respondent) (Withdrawn)

1309-10-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. E.P. Electrical Contracting Ltd., Sourges N Investments Ltd. and, Charles Leclair o/a C. Leclair Electric (Respondent) *(Granted)*

SALE OF A BUSINESS

2799-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Reitzel Bros. Holdings Inc., Reitzel Bros. Environmental and, Reitzel Bros. Asbestos Removal Ltd., 1643389 Ontario Inc. o/a Envirocare (Respondent) (Withdrawn)

3710-09-R: Quinte Healthcare Corporation (Applicant) v. Ontario Public Service Employees Union, Local 480 ("OPSEU 480"), Ontario Nurses' Association ("ONA"), Service Employees International Union, Local l.on ("SEIU") and, National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 830 ("CAW") (Respondent) *(Terminated)*

1309-10-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. E.P. Electrical Contracting Ltd., Sourges N Investments Ltd. and, Charles Leclair o/a C. Leclair Electric (Respondent) *(Granted)*

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

0316-10-R: Michel Varalo (Applicant) v. The International Union of Painters and Allied Trades District Council 46 Local 1891 - (Locals 557, 1487, 1630, 1819) (Respondent) v. Front Line Contracting Inc. (Intervener) *(Granted)*

Unit: "The Employer recognizes the Union as the sole and exclusive bargaining agent for all its employees engaged in the work referred to in: (i) Appendix A, in all sectors of the construction industry in the Province of Ontario and engaged in any such work of a non-construction nature in the said Province, save and except any work covered by the Collective Agreement between the Ontario Council of the International Union of Painters and Allied Trades and the Electrical Power Systems Construction Association; (ii) Appendix B, the Employer recognizes the Union as the sole and exclusive bargaining agent for its employees engaged in work outlined in the Scope and Trade Jurisdiction of Work of the Agreement in the Province of Ontario, save and except any work covered by the Collective Agreement between the Ontario Council of the International Union of Painters and Allied Trades and the Electrical Power Systems Construction Association; and (iii) Appendix C, in all sectors of the construction industry in the jurisdictional territory referred to in Appendix C and engaged in any such work of a non-construction nature in the said territory, save and except any work covered by the Collective Agreement between the Ontario Council of the International Union of Painters and Allied Trades and the Electrical Power Systems Construction Association." (1 employee in unit)

Number of names of persons on revised voters' list	1
Number of persons who cast ballots	1
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3440-10-R: The Employees of Hollander Canada Home Fashions Limited (Applicant) v. Workers United Ontario Council (Respondent) v. Hollander Canada Home Fashions, Limited (Intervener) *(Granted)*

Unit: "the Employer recognizes the union as the exclusive representative and sole collective bargaining agent for all its production and maintenance employees in the City of Toronto, save and except supervisors, and those above the rank of supervisor, office staff, sales staff, QUACKS, Industrial Engineers, guards, students employed during school vacation periods, and clerical staff." (51 employees in unit)

Number of names of persons on revised voters' list	51
Number of persons who cast ballots	48
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	48
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of ballots marked in favour of respondent	11
Number of ballots marked against respondent	37
Number of ballots segregated and not counted	0

3611-10-R: Canadian National Federation of Independent Unions (CNFIU) (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW Canada) (Respondent) (Withdrawn)

4145-10-R: Anjanie Singh (Applicant) v. Service Employees International Union, Local 1 Canada (Respondent) v. Sunrise of Unionville (Intervener) *(Dismissed)*

Unit: "all employees of Sunrise of Unionville employed at 38 Swansea Road, Town of Markham, save and except Co-ordinators, persons above the rank of Co-ordinator, registered and graduate nurses employed in a nursing capacity, and office and clerical staff." (88 employees in unit)

Number of names of persons on revised voters' list	91
Number of persons who cast ballots	69
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	68
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	37
Number of ballots marked against respondent	30
Number of ballots segregated and not counted	1

4233-10-R: Marcie Aveiro & the Pro-Vote Organizers of Encore Sales (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Respondent) v. Encore Sales (Intervener) *(Dismissed)*

Unit: "all employees of Encore Sales in the City of Vaughan, save and except supervisors, persons above the rank of supervisor, office, clerical staff." (104 employees in unit)

Number of names of persons on revised voters' list	103
Number of persons who cast ballots	97
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	97
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	66
Number of ballots marked against respondent	31
Number of ballots segregated and not counted	0

4259-10-R: Employees of Hawk Residential Care and Treatment Homes Inc. (Applicant) v. Service Employees International Union Local 1 Canada (Respondent) v. Hawk Residential Care and Treatment Homes Inc. (Intervener) *(Dismissed)*

Unit: "all employees of the of Hawk Residential Care and Treatment Homes in the city of Kawartha Lakes save and except house supervisors and persons above the rank of house supervisor" (33 employees in unit)

0020-11-R: Jenny Tu (Applicant) v. United Food and Commercial Workers International Union, Local 175 (Respondent) *(Dismissed)*

0098-11-R: Veronica Pappas (on behalf of a group of employees) (Applicant) v. Workers United Ontario Council and its Local 2347 (Respondent) v. Filterfab Company (Intervener) *(Granted)*

Unit: "the Company recognizes the Union as the exclusive bargaining agent for its employees at its plants in the Province of Ontario, save and except foremen, foreladies, persons above the rank of foreman and forelady, office, clerical and sales staff, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period" (12 employees in unit)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	2
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	7
Number of ballots segregated and not counted	0

0228-11-R: Cindy Luxton (Applicant) v. The Service Employees International Union (SEIU), Local 1.on (Respondent) *(Dismissed)*

APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

4341-10-U: Benteler Automotive Canada Corporation (Applicant) v. National Automobile, Aerospace, Tranportation and General Workers Union of Canada, (CAW-Canada) and its Local 1285, Bev Price, Ed Briffia, Glenda Tucker, Nelson Barros, Jody Schnieder, Cathy Godi, Raquet Myers, Michell Gibbs, Brenda MacDonald, Shannon Farley, Quang Duong, Dave Cogswell, Ryan Siddle, Paul Galant, Kelly Jacklin, Steve Ball, Roger Fuller, Cornelius Vormaworth, Dave Mullett, David Davis, Brian Harkness, Hardip Jawanda, Joe Balloutine, Elaine Redarski, Brian Morby, Helen Duong, Mira Caupk, Jacqueline Meloche, Jeff Ranson, Doug Ireland, Marlene Jones, Elizabeth Welke, Tammy Allen, Margaret Rivero, Clive Johnson, Michelle Bronizwwski, Frank Mendecino, Arlene Hughes, Teresa Chojnowska, Sheryl Ciarroca, Mike Curran, Vaughn Cole, Tom Clark, Pierro Izzo, Heather Hartford, Corey Demarchant, John Moreira, Tim Hale, Keith Cogswell and Wayne Kelly (Respondent) *(Granted)*

APPLICATION UNDER THE AMBULANCE SERVICES COLLECTIVE BARGAINING ACT

3997-10-M: Canadian Union of Public Employees and its Local 2974.2 (Applicant) v. The Corporation of the County of Essex (Essex-Windsor Emergency Medical Services) (Respondent) *(Terminated)*

COMPLAINTS OF UNFAIR LABOUR PRACTICE

1589-07-U: Labourers' International Union of North America, Ontario Provincial District Council (OPDC) (Applicant) v. Birnam Excavating Ltd. (Respondent) *(Dismissed)*

3738-07-U: Communications, Energy and Paperworkers Union of Canada, and it's Local 2003 (Applicant) v. 2047330 Ontario Limited and Kermecho Canada Limited (Respondent) *(Terminated)*

0262-09-U: Paul W. Watkins (Applicant) v. CUPE and its Local 5167 (Respondent) *(Dismissed)*

3419-09-U: Rick Johnson (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) *(Dismissed)*

3936-09-U: Gregory A. Monck (Applicant) v. CAW Local 1520 (Respondent) v. Ford Motor Company of Canada Ltd (Intervener) *(Dismissed)*

0080-10-U: Warren Cain, Mark Oliver and Brian Reguly (Applicant) v. Sheet Metal Workers' International Association, Local 504 and Ontario Sheet Metal Workers' Conference (Respondent) *(Dismissed)*

0138-10-U: Society Staff Union (Applicant) v. Bruce Power L.P. (Respondent) v. The Society of Energy Professionals (Intervener) *(Dismissed)*

0646-10-U: Ontario Pipe Trades Council (Applicant) v. Fuller Industrial Corporation (Respondent) (Withdrawn)

0676-10-U: Jose Richard Silva (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Respondent) v. Capital Disposal Equipment 2001 (Intervener) *(Dismissed)*

0926-10-U: Kimberley Gilmour (Applicant) v. Trillium Lakelands Occasional Teacher Local (Respondent) v. Trillium Lakelands District School Board (Intervener) *(Dismissed)*

1053-10-U: Ray Taylor (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) *(Dismissed)*

1277-10-U: France Blais (Applicant) v. United Food and Commercial Workers Canada, Local 175 (Respondent) v. Weston Bakeries Limited (Intervener) (Withdrawn)

1462-10-U: Ashok Kumar (Applicant) v. Unilever Canada Inc. (Respondent) v. Milk & Bread Drivers, Dairy Employees, Caterers & Allied Employees, Local Union No. 647 (Intervener) *(Dismissed)*

1484-10-U: Service Employees International Union Local 1 Canada (Applicant) v. ParaMed Home Health Care (Central North East District) (Respondent) (Withdrawn)

1694-10-U: Mohammad Khalid Choudary (Applicant) v. Teamsters Local Union No. 419 (Respondent) *(Dismissed)*

1768-10-U: United Food and Commercial Workers International Union, Local 175 (Applicant) v. ADM Agri-Industries Company (Respondent) (Withdrawn)

1802-10-U: Asitkumar H. Gandhi (Applicant) v. United Steelworkers of America, Local 8341 (Respondent) v. KIK Custom Product (Intervener) *(Dismissed)*

1867-10-U: Brenda Adams (Applicant) v. SEIU Local 1 Canada (Respondent) *(Dismissed)*

1895-10-U: Lois-Ann Kohar (Applicant) v. Ontario Secondary School Teachers' Federation (Respondent) *(Dismissed)*

1909-10-U: Cindy Grimard (Applicant) v. Canadian Union of Public Employees #65 (Respondent) v. Corporation of the Town of Fort Frances (Intervener) (Withdrawn)

2084-10-U: Giovanni Gianfrancesco (Applicant) v. International Brotherhood of Electrical Workers Local Union 303, Canada (Respondent) *(Dismissed)*

2246-10-U: Steven De Prophetis (Applicant) v. Ontario Public Service Employees Union (Respondent) v. The Queen in Right of Ontario as represented by the Ministry of Labour (Intervener) *(Terminated)*

2784-10-U: Norman Garlock (Applicant) v. Communication, Energy and Paperworkers Union of Canada (Respondent) v. Abitibi Bowater (Intervener) *(Dismissed)*

2865-10-U: Alireza Motalebian (Applicant) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Respondent) *(Dismissed)*

2912-10-U: Susana de Albuquerque (Applicant) v. OSSTF District 12 (Respondent) v. Toronto District School Board (Intervener) *(Dismissed)*

2921-10-U: John Walsh (Applicant) v. Maintenance Construction Skilled Trades Council (Respondent) *(Dismissed)*

3068-10-U: United Food and Commercial Workers International Union, Local 333 (Applicant) v. Russell Security Services Inc., Liquor Control Board of Ontario and, Chris Tait (Respondent) (Withdrawn)

3090-10-U: Jennifer Isotalo (Applicant) v. OSSTF, District 6A, Thunder Bay (Respondent) v. Lakehead Public Schools (Intervener) (Withdrawn)

3547-10-U: Canadian Office and Professional Employees, Local 236 (Applicant) v. Superior Credit Union Ltd. (Respondent) (Withdrawn)

3567-10-U: Warren Mouck (Applicant) v. CUPE Local 4722 (Respondent) v. Coornerstone Community Association (Intervener) (Withdrawn)

3610-10-U: Luigi Lisanti (Applicant) v. United Food & Commercial Workers, Local 206 (Respondent) (Withdrawn)

3664-10-U: United Food and Commercial Workers International Union, Local 175 & 633 (Applicant) v. Adventure Inn and Conference Centre (Respondent) (Withdrawn)

3668-10-U: Marek Nowictir (Applicant) v. Unite Here Local 75 (Respondent) (Withdrawn)

3761-10-U: Canadian Union of Public Employees (Applicant) v. Ottawa Fertility Centre (Respondent) (Withdrawn)

3805-10-U: Joseph Landry (Applicant) v. Graphic Communications Conference International Brotherhood of Teamsters Local l00-M (Respondent) v. Georgia Pacific Canada Consumer Products LP (Intervener) (Withdrawn)

3847-10-U: William Ching (Applicant) v. UNITE HERE Local 75 (Respondent) (Withdrawn)

3869-10-U: Roberta Taylor (Applicant) v. United Steelworkers Union U5W9511 Alvin Malcom and Herb Daniher (Respondent) v. Serco DES Inc. (Intervener) (Withdrawn)

3940-10-U: Sheet Metal Workers' International Association, Local 51 (Applicant) v. Starcrest Homes Ltd. and, 2212057 Ontario Inc. (Respondent) *(Terminated)*

4002-10-U: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Aramark Canada Ltd. (Respondent) (Withdrawn)

4094-10-U: Marie Junie Dutrevil (Applicant) v. Centre de soins de longue duree Montfort (Respondent) v. Syndicat Canadien de la Fonction Publique (SCFP), et Section Locale 4429 du SCFP (Intervener) *(Dismissed)*

4217-10-U: Hilary Davis, Judith Cohen, William Gleber10n, Amy Lavender Harris, Lykke De La Cour, (representing the CUPE 3903 Unit 2 Working Group), Jon Johnson and Bob Hanke (moderators of the Unit 2 Website and listserv) (Applicant) v. Canadian Union of Public Employees, Local 3903 (Respondent) *(Dismissed)*

0049-11-U: Labourers' International Union of North America, Local 1059 (Applicant) v. P.L.S. Landscaping and Excavating Ltd. (Respondent) *(Granted)*

JURISDICTIONAL DISPUTES

0l01-09-JD: Ontario Nurses' Association (Applicant) v. St. Joseph's Healthcare Hamilton (Respondent) v. Canadian Union of Public Employees and its Local 786 (Intervener) (Withdrawn)

3401-09-JD: United Brotherhood of Carpenters and Joiners of America, Local 1256 (Applicant) v. Pro Insulation Limited and, International Association of Heat and Frost Insulators and Allied Workers Local 95 (Respondent) v. Master Insulators Association of Ontario (Intervener) *(Dismissed)*

EMPLOYEE STATUS

3665-10-M: United Food and Commercial Workers International Union, Local 175 & 633 (Applicant) v. Adventure Inn and Conference Centre (Respondent) (Withdrawn)

4004-10-M: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Aramark Canada Ltd. (Respondent) (Withdrawn)

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

0305-10-OH: Tashi Aathytsang (Applicant) v. 2126724 Ontario Limited 0/a Bagel World (Respondent) (Withdrawn)

1583-10-OH: Charles Fredrik Hanson and (Applicant) v. Otrex Holdings Inc. and, Otrex Communications Inc., carrying on business as gordongroup; purporting to carry on business as Gordon Creative Group and/or vice versa; purporting to carry on business as The Gordon Group and/or vice versa; purporting to carry on business as gordongroup marketing + communications and/or vice versa and, The Gordon Group, a Division of Otrex Communications Inc. and, Gordongroup Dubai and, Robert Chitty and, Howard Whittaker and, Thomas Krayer (Respondent) *(Dismissed)*

2051-10-OH: Amber Nicole English (Applicant) v. Raj Bhatia (Respondent) *(Dismissed)*

2535-10-OH: Jonathan Hamilton (Applicant) v. InterRent Holdings Limited Partnership and, CLV Group (Respondent) (Withdrawn)

2599-10-OH: James Barton (Applicant) v. Commissionaires (Great Lakes) (Respondent) *(Dismissed)*

2645-10-OH: Vincen10 Gugliotta (Applicant) v. Electro-Motive Canada Co. (Respondent) *(Dismissed)*

3099-10-OH: Stephen Harris (Applicant) v. Liquor Control Board of Ontario (Respondent) (Withdrawn)

3498-10-OH: Linda Gale Henry (Applicant) v. Georgian Bay General Hospital (Respondent) *(Dismissed)*

3935-10-OH: Kimberley Milliard (Applicant) v. Gif ford Contract Homes Ltd. (Respondent) (Withdrawn)

4027-10-OH: Oliver Orlando Taylor (Applicant) v. Rustique Inc. (Respondent) (Withdrawn)

4196-10-OH: Russell Smith (Applicant) v. Transelec Common Inc. (Respondent) (Withdrawn)

4229-10-OH: Giselle Russell and Andrew Boulden (Applicant) v. Minto Property Management, High Park Village (Respondent) *(Terminated)*

CONSTRUCTION INDUSTRY GRIEVANCES

3205-YI-G: International Union of Operating Engineers, Local 793 (Applicant) v. 1130887 Ontario Inc. o/a Latta Crane Services (Respondent) v. Crane Rental Association of Ontario (Intervener) *(Dismissed)*

0386-08-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 2090950 Ontario Limited c.o.b. as PDG Theatre Land Holdings (Respondent) *(Dismissed)*

2767-09-G; 2769-09-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Black & McDonald Ltd. (Respondent); International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Carleton Electric Ltd. (Respondent) *(Granted)*

3129-09-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Cloke-Kirby Construction Ltd. (Respondent) (Withdrawn)

3235-09-G: United Brotherhood of Carpenters and Joiners of America, Local 1256 (Applicant) v. Ellis Don Corporation (Respondent) (Withdrawn)

4004-09-G: International Union of Elevator Constructors, Local 96 (Applicant) v. Otis Canada Inc. (Respondent) (Withdrawn)

1066-10-G: International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Ontario Insulation Oshawa Limited (Respondent) (Withdrawn)

2474-10-G: The International Union of Painters and Allied Trades, Local Union 1671 (Applicant) v. Clara Industrial Services Ltd. (Respondent) (Withdrawn)

2783-10-G: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 853 Sprinkler Fitters of Ontario (Applicant) v. Frank's Sprinkler Ltd. (Respondent) *(Terminated)*

2818-10-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. City of Toronto (Respondent) (Withdrawn)

2832-10-G: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers Local 128 (Applicant) v. E.S. Fox (Respondent) (Withdrawn)

2987-10-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. FIM Construction Ltd., Phillip Wise, Thomas F. Pope and, Michael Pope (Respondent) *(Granted)*

3276-10-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67 (Applicant) v. Kem Khider Electromechanical (Respondent) *(Granted)*

3499-10-G; 3500-10-G; 3501-10-G; 3655-10-G; 3656-10-G: United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canada, Local 787 (Applicant) v. Toromont Industries Ltd. c.o.b. as Climate Control (Respondent) (Withdrawn)

3835-10-G: Universal Workers Union, Labourers' International Union (Applicant) v. Niran Construction Ltd. (Respondent) (Withdrawn)

3944-10-G: United Brotherhood of Carpenters and Joiners of America, Carpenters District Council of Ontario, Local 494 (Applicant) v. Trojan Interior Contracting (2002) Limited (Respondent) *(Endorsed Settlement)*

3980-10-G: The Formwork Council of Ontario and, Labourers' International Union of North America, Local 1059 (Applicant) v. Tricar Developments Inc. (Respondent) (Withdrawn)

4049-10-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Forte Concrete Inc. (Respondent) (Withdrawn)

4086-10-G: Sheet Metal Workers' International Association, Local Union No. 285 (Applicant) v. Medcon Mechanical Ltd. (Respondent) *(Granted)*

4137-10-G: Labourers' International Union of North America, Local 625 (Applicant) v. L. Mailloux Construction (2000) Inc. (Respondent) (Withdrawn)

4147-10-G; 4148-10-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. PCL Constructors Canada Inc. (Respondent) (Withdrawn)

4180-10-G; 4181-10-G: International Union of Operating Engineers, Local 793 (Applicant) v. Mortenson Construction (Respondent) (Withdrawn)

4181-10-G: International Union of Operating Engineers, Local 793 (Applicant) v. Mortenson Construction (Respondent) (Withdrawn)

4182-10-G: Carpenters' District Council of Ontario, Local 2486 (Applicant) v. 1789184 Ontario Corp. o/a Salwood General Contractors (Respondent) (Withdrawn)

4193-10-G: Canadian Union of Skilled Workers (Applicant) v. Transelec Common Inc. (Respondent) (Withdrawn)

4201-10-G: International Union of Elevator Constructors, Local 90 (Applicant) v. ThyssenKrupp Elevator (Canada) Ltd. (Respondent) (Withdrawn)

4225-10-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Regal Electricians Inc. (Respondent) *(Dismissed)*

4226-10-G: United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. Metro Drywall Contracting Ltd., Drago Jelic (Respondent) *(Granted)*

4227-10-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Metro Hoisting and Erecting Limited (Respondent) *(Granted)*

4231-10-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Westview Electric Contractors Inc. (Respondent) *(Granted)*

4252-10-G: International Association of Heat and Frost Insulators (Applicant) v. Active Insulation Inc. (Respondent) *(Granted)*

4255-10-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Discovery Electric Ontario Limited (Respondent) *(Endorsed Settlement)*

4257-10-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Welsh Glassworks Inc. (Respondent) *(Granted)* 353 (Applicant) v.

4269-10-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Wasif Yousif c.o.b. as Khider Electromechanical (Respondent) *(Endorsed Settlement)*

4270-10-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. 1587855 Ontario Inc. o/a Bass Installations (Respondent) *(Granted)*

4308-10-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Aspen Ridge Homes and/or Aspen Ridge Design Build LP (Respondent) (Withdrawn)

4335-10-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Vanbet Services Inc. (Respondent) *(Granted)*

4337-10-G: Labourers' International Union of North America, Local 1089 (Applicant) v. Curran Contractors Ltd. (Respondent) *(Endorsed Settlement)*

0006-11-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Grey County Welding & Construction Ltd. (Respondent) (Withdrawn)

0022-11-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Lorcon 2000 Contracting Ltd. (Respondent) *(Granted)*

0033-11-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Concord Glazing Systems Inc. (Respondent) *(Endorsed Settlement)*

0037-11-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Regal Electricians Inc. (Respondent) *(Granted)*

0044-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Total Siteworks Inc. (Respondent) *(Granted)*

0045-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Total Siteworks Inc. (Respondent) *(Granted)*

0058-11-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Monac Steel Limited (Respondent) *(Granted)*

0059-11-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. TP Erection Company Ltd. (Respondent) *(Granted)*

0060-11-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 700 (Applicant) v. Lambton Metal Service (Respondent) *(Granted)*

0064-11-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Sam's Rebar Placing (Respondent) *(Granted)*

0096-11-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Mappi Ltd. (Respondent) *(Granted)*

0124-11-G: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. M.O.B. Wall Systems Inc. (Respondent) *(Granted)*

0140-11-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Vicon Electrical Contractors Inc., Vicon Electrical Contractors (Ontario) Ltd., Vicon Electric (2004) Inc. (Respondent) *(Endorsed Settlement)*

0150-11-G: Labourers' International Union of North America, Local 247 (Applicant) v. J.J. McGuire General Contractors (Respondent) *(Terminated)*

0157-11-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Orangeville Welding Ltd. (Respondent) (Withdrawn)

0165-11-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Peelco Construction Services Limited, John Matas c.o.b. as Matas Homes, Donmar Contraplan Inc., Matas Management Services Inc. (Respondent) *(Endorsed Settlement)*

0170-11-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. 1568278 Ontario Inc. o/a Basic Industries Glazing (Respondent) *(Granted)*

APPEALS – EMPLOYMENT STANDARDS ACT

3172-07-ES: Invisions Productions Inc. (Applicant) v. Dennis Chong and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2885-09-ES: Organizational Solutions Inc. (Applicant) v. Susan Lee-Anderson and, Director of Employment Standards (Respondent) *(Dismissed)*

3696-09-ES: Mukta Handa (Applicant) v. Talia Enterprises Inc. and Talisse Enterprises Inc o/a Tim Hortons, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3958-09-ES: Wine-Time Products Incorporated (Applicant) v. William B. Duncan, Director of Employment Standards (Respondent) *(Dismissed)*

0633-10-ES: Moses Cordeiro, a director of CBS Carpet Cleaning Service Inc. (Applicant) v. Norman Cooper, Chris Parrish, Jennifer Kerel, Blair King and, Director of Employment Standards (Respondent) *(Granted)*

0882-10-ES: Chelliah Purushothaman a Director of 4-Mode Global Logistics Inc. (Applicant) v. Baherathan Thiyagarajah and, Director of Employment Standards (Respondent) *(Dismissed)*

1002-10-ES: A.L. Lebrun Flooring Inc. (Applicant) v. John Kennedy and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1072-10-ES: Mike Leach (Applicant) v. Complex Services Inc. o/a Casino Niagara and, Director of Employment Standards (Respondent) (Withdrawn)

1078-10-ES: Citywide Door & Hardware Inc. (Applicant) v. Antonella Rinaldi and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1210-10-ES: London Dairy Farms Ltd. (Applicant) v. Tracy Hall and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1218-10-ES: Coco Paving Inc. (Applicant) v. Ivana Ilic and, Director of Employment Standards (Respondent) *(Terminated)*

1290-10-ES: Teresa Osinska (Applicant) v. Nustef Foods Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1295-10-ES: Azar Trading/Neo-Paws International (Applicant) v. Daniella Castellan and, Director of Employment Standards (Respondent) *(Dismissed)*

1345-10-ES: Patrick Chamberland (Applicant) v. Metro Ontario Inc. and, Director of Employment Standards (Respondent) (Withdrawn)

1362-10-ES: No-Glare Architectural Glass Inc. (Applicant) v. Dewan Persaud and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1369-10-ES: Matrix Logistics Services Limited (Applicant) v. Carmen Figari, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1400-10-ES: LK Protection Inc. (Applicant) v. Benjamin Nwajei and, Director of Employment Standards (Respondent) (Withdrawn)

1423-10-ES: Xiuzhen Huang (Applicant) v. Research and Management Corporation o/a WSI Internet Consulting & Education, Director of Employment Standards (Respondent) *(Terminated)*

1450-10-ES: Laurentian Lanes Ltd. (Applicant) v. Guy Breen and, Director of Employment Standards (Respondent) (Withdrawn)

1539-10-ES: Robert A. Yull (Applicant) v. Town & Country Painting Inc. and, Director of Employment Standards (Respondent) (Withdrawn)

1657-10-ES: Candice D. Brown (Applicant) v. 1715717 Ontario Inc. o/a Star Diner, Director of Employment Standards (Respondent) *(Granted)*

1734-10-ES: Direct Fine Foods Ltd. (Applicant) v. Christopher Dalley and, Director of Employment Standards (Respondent) *(Dismissed)*

1758-10-ES: Crossmark Canada Inc. (Applicant) v. Susan Gutzman and, Director of Employment Standards (Respondent) *(Terminated)*

1770-10-ES: Marlyn Surujnairn operating as Royal Cuts (Applicant) v. Chan Bopha Chin and, Director of Employment Standards (Respondent) *(Granted)*

1864-10-ES: Kerdel Campbell (Applicant) v. Long & Morris Property Management Ltd. and, Director of Employment Standards (Respondent) *(Dismissed)*

1873-10-ES: Tern Brackett (Applicant) v. 7159731 Canada Inc. o/a Eco-Environmental Cleaning Operations, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1874-10-ES: Art of Dance Center (Applicant) v. Raywattie Khelwaman and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1901-10-ES: 1781807 Ontario Limited o/a London Gold's Gym (Applicant) v. Mr. James Ricco and, Director of Employment Standards (Respondent) *(Granted)*

1915-10-ES: 921721 Ontario Limited o/a Lakair Lodge (Applicant) v. William H. Mulder and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1926-10-ES: Catherine Bohac (Applicant) v. Cara Operations Limited/Entreprises Cara Limitee o/a Harvey's Restaurant and, Director of Employment Standards (Respondent) (Withdrawn)

1928-10-ES: Cheyenne Nicholson (Applicant) v. Casino Rama Services Inc. and, Director of Employment Standards (Respondent) *(Granted)*

1935-10-ES: Sandra A. Cartledge (Applicant) v. SKL4EVR Ltd. and, Director of Employment Standards (Respondent) (Withdrawn)

2082-10-ES: Mary Panoff-Nedeljkov (Applicant) v. Cells for Life Cord Blood Institute Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

2114-10-ES: Nabeel Nassar (Applicant) v. Finelli Engineering Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2151-10-ES: Georgia Pacific Canada, Consumer Products, ULC (Applicant) v. Daniel Tooriram and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2261-10-ES: Franklin Cockshutt (Applicant) v. Computer Facility Services Inc., and Computer Methods International Corp. and, Director of Employment Standards (Respondent) (Withdrawn)

2262-10-ES: Synergex Corporation o/a Synergex Corp. (Applicant) v. Jean-Paul Rehr and, Director of Employment Standards (Respondent) *(Dismissed)*

2298-10-ES: Anna-Marie Carreiro (Applicant) v. DeMarco Funeral Home (Keele Chapel) Inc. and, Director of Employment Standards (Respondent) (Withdrawn)

2351-10-ES: IBM Canada Limited/IBM Canada Limit~e (Applicant) v. Cyril Gibb and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2390-10-ES: Elena Shapira (Applicant) v. R&D 2000 and Sennett Control Company Limited, Director of Employment Standards (Respondent) *(Dismissed)*

2393-10-ES: Weijie Ma (Applicant) v. 2052691 Ontario Inc., Director of Employment Standards (Respondent) *(Dismissed)*

2413-10-ES: Stephen Blackbyrne (Applicant) v. Morningstar Research Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2592-10-ES: Edward K. Shriefer and Ruth Anne Shriefer operating as The Pie Plate (Applicant) v. Roisin Tozer and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2597-10-ES: Attridge Transportation Inc. (Applicant) v. Christina Pritchard and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2683-10-ES: Mustapha Chawqui (Applicant) v. Cooperative du College Bo4eal Limit4e and Association Canadienne-Francaise de l'Ontario, Conseil College Boreal and ACFO London- Sarnia and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2763-10-ES; 2764-10-ES: Bryan Robertson a Director of Kingsway Brokerage Ltd. (Applicant) v. Gerry-Kay Ryan, Director of Employment Standards (Respondent); Anne Stern a director of Kingsway Brokerage Ltd. (Applicant) v. Gerry-Kay Ryan, Director of Employment Standards (Respondent) (Withdrawn)

2857-10-ES: 1280136 Ontario Inc. oa North on Sixty (Applicant) v. Adam Talbot and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2860-10-ES: Federal Security Agency Corporation (Applicant) v. Morcos Malaty and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3012-10-ES: Danielle A. Ranger (Applicant) v. Vivianna E. Sigurdson c.o.b. as Viviana Skin & Body and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3013-10-ES: Shannon Robinson (Applicant) v. 2095745 Ontario Inc. o/a OL' West Wing, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3053-10-ES: Eddy Hui (Applicant) v. EPM Global Services Inc. and, Director of Employment Standards (Respondent) (Withdrawn)

3062-10-ES: Scott Morrison, a Director of The Sheila Morrison Schools (Applicant) v. Munir Abmad, Jason Cormier, Kelly Dickey, Nora Reekie and, Director of Employment Standards (Respondent) (Withdrawn)

3080-10-ES: Ilona Skeba, a Director of 1521154 Ontario Inc. o/a East Side Mario's (Applicant) v. Mathew St. Amant, Mary McNaughton, Chrystina Alampi, Jonathan Goddard, Jennifer Edmonds, Mitchell St. Amant, Matthew Gourlay and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3097-10-ES: Clive McFarlane (Applicant) v. Carquest Canada Ltd./Carquest Canada Ltee and, Director of Employment Standards (Respondent) (Withdrawn)

3119-10-ES: Kim Pollock (Applicant) v. 1550773 Ontario Inc. o/a Bang-On and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3144-10-ES: Ruel Jude Vasandani (Applicant) v. Pro-Art Dental Laboratory Ltd. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3177-10-ES: Aden Landscape and Design Inc. (Applicant) v. Phil Goodman and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3187-10-ES: RNR Patient Transfer Services Inc. (Applicant) v. Billie-Ann Orr, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3203-10-ES: Cristobal Bastidas (Applicant) v. Balnet Management Group Inc. o/a Terrace Banquet Centre Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3239-10-ES: Priszm Inc. (Applicant) v. Glester Muschette, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3240-10-ES: Oskam Welding & Machine Ltd. (Applicant) v. Jamie Caughell-Wasyluk and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3242-10-ES: Aro Inc. (Applicant) v. Dawn Langridge, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3243-10-ES: ARO Inc. (Applicant) v. Laura Roberts and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3244-10-ES: Aro Inc. (Applicant) v. Vanessa St. Pierre, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3261-10-ES: 365 Cares Residential Services Ltd. (Applicant) v. Anna Sinadinos and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3265-10-ES: NCO Financial Services, Inc./Services Financiers NCO, Inc. (Applicant) v. Jeffrey Radmore and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3280-10-ES: Tom Matisz (Applicant) v. Advantage Engineering Inc., and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3291-10-ES: Rumanek & Company Ltd. (Applicant) v. Anjanie Seruga-Baron and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3303-10-ES: Jose G. Loaiza Acevedo (Applicant) v. Westwood Painting Services Incorporated/Westwood Painting Services Inc., and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3308-10-ES: Shu Jin Du (Applicant) v. 1524400 Ontario Inc. o/a London International Academy, and Director of Employment Standards (Respondent) (Withdrawn)

3324-10-ES: Marwood Metal Fabrication Limited (Applicant) v. Helena Obu and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3325-10-ES: Marwood Metal Fabrication Limited (Applicant) v. Mary Farkas and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3332-10-ES: Ernest Layne Black (Applicant) v. 1488465 JC Pallets Recycling Ltd. o/a JC Pallets Recycling Ltd., and Director of Employment Standards (Respondent) *(Terminated)*

3430-10-ES: Deborah Piatkowski (Applicant) v. Interpaving Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3433-10-ES: David Carter (Applicant) v. Globe Trotters Logistics Inc., and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3451-10-ES: Lawrence A. Bourke (Applicant) v. 1730250 Ontario Inc. o/a Active Green + Ross 2115, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3478-10-ES: Permaboss.cOm Inc. (Applicant) v. Stephen Chan, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3512-10-ES: Ann Schildt (Applicant) v. Pointts Advisory Limited and, Director of Employment Standards (Respondent) (Withdrawn)

3576-10-ES: P.G. Disposal Service Inc. operating as 1-800-Got-Junk (Applicant) v. Shane Sastaunik and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3705-10-ES: Tanya Godfrey (Applicant) v. Stock Transportation Ltd., Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3733-10-ES: Tongbo Luan (Applicant) v. OGO Fibers Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3751-10-ES: Richard Smith (Applicant) v. City Rentals Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3769-10-ES: Mykhaylo Pishchak (Applicant) v. CPA Lemberg Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3787-10-ES: Leuschen Bros. Limited operating as Leuschen Brothers Ltd. (Applicant) v. Anne Dipsell and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3792-10-ES: Catch 22 Fresh Market Grill Ltd. 1617106 o/a Catch 22 Fresh Market Grill (Applicant) v. Adrian Robbeson and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3817-10-ES: Accu-Tel Messages Centres Inc. operating as Accutel Call Centre (Applicant) v. Kaaren Tamm and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3838-10-ES: Bains Foods Inc. operating as Tim Hortons (Applicant) v. Rabma Ahmed, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3878-10-ES: Hong Wai Shee (Applicant) v. Collect Coin Credit Inc. and, Director of Employment Standards (Respondent) *(Terminated)*

3889-10-ES: Canadian Niagara Hotels Inc. (Applicant) v. Alicia Marshall and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3898-10-ES: Dr. Sahar Rakhshanfar (Applicant) v. Candy Knight and, Director of Employment Standards (Respondent) *(Terminated)*

3900-10-ES: Ayr Turf & Trac Ltd. (Applicant) v. David Tisdale, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3910-10-ES: William T. Patterson (Applicant) v. Stock Transportation Ltd., Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3911-10-ES: Kern Jacqueline Levesque (Applicant) v. Turf Operations Scarborough Inc./Weed Man and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3927-10-ES: Watson Building Supplies Inc. (Applicant) v. Aaron Ballantyne, and Director of Employment Standards (Respondent) *(Terminated)*

3938-10-ES: CKF Inc. (Applicant) v. Charlene Cooper and, Director of Employment Standards (Respondent) *(Terminated)*

3941-10-ES: Nickel City Hotel (2009) Limited o/a The Nickel City Hotel (Applicant) v. Denise A. Seguin and, Director of Employment Standards (Respondent) *(Terminated)*

3951-10-ES: Bridge Tite Waterproofing & Sealing Ltd. o/a The Bridge Tite Group (Applicant) v. Micheal Labute and, Director of Employment Standards (Respondent) *(Terminated)*

3953-10-ES: Richard D. Hack (Applicant) v. Royal Tire Sudbury Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3958-10-ES: Dhami Energy Inc. o/a Pristine Solutions (Markham) (Applicant) v. Terry-Ann Morris-Brown and, Director of Employment Standards (Respondent) *(Terminated)*

3978-10-ES: Autostar Superstore Canada Inc. (Applicant) v. Jason Brook and, Director of Employment Standards (Respondent) *(Terminated)*

3998-10-ES: Durham Fine Cars Inc. operating as Bessada Kia of Ajax and Pickering (Applicant) v. Theresa Patterson and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3999-10-ES: 1648496 Ontario Limited, o/a Premiere Van Lines (Applicant) v. Catharine Stewart and, Director of Employment Standards (Respondent) *(Terminated)*

4031-10-ES; 4032-10-ES; 4033-10-ES: Soma Networks Canada Corporation (Applicant) v. Dinesh Thandapany and, Director of Employment Standards (Respondent); Soma Networks Canada Corporation (Applicant) v. Yun Guang Xin and, Director of Employment Standards (Respondent); Soma Networks Canada Corporation (Applicant) v. Pradeep Arora and, Director of Employment Standards (Respondent) *(Terminated)*

4085-10-ES: Zedd Customer Solutions LP (Applicant) v. Suzanne Simard and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4100-10-ES: bun Salnikov (Applicant) v. Keane Canada Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4144-10-ES; 4146-10-ES: 1340847 Ontario Inc./Performance Wireless (Applicant) v. Jenifer C. Hall and, Director of Employment Standards (Respondent); 1340847 Ont Inc./Performance Wireless and (Applicant) v. Melanie C. Hodgkins and, Director of Employment Standards (Respondent) (Withdrawn)

4174-10-ES: Ank 'N' RAC Consulting Inc. o/a Country Style Deli Bistro (Applicant) v. Nancy Allen and, Director of Employment Standards (Respondent) *(Terminated)*

4261-10-ES: Sunrise International Travels (Applicant) v. Devika Beharry and, Director of Employment Standards (Respondent) *(Terminated)*

4291-10-ES: Martin Pettifer (Applicant) v. Draeger Safety Canada Limited/Appareils de Securite Draeger Canada Limitee, Director of Employment Standards (Respondent) *(Terminated)*

4301-10-ES: North American Search Group Inc. (Applicant) v. Sabrina Ouellette and, Director of Employment Standards (Respondent) *(Dismissed)*

4303-10-ES: Goudas Food Products & Investments Ltd. (Applicant) v. Luis Perreira, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4331-10-ES: Cramer & Company Limited and Nuboss Inc. (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

4340-10-ES: 1602639 Ontario Inc. (Applicant) v. Malvika Sethi and, Director of Employment Standards (Respondent) *(Terminated)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

2895-09-HS: City of Toronto (Applicant) v. Henry Kole, Inspector (Respondent) (Withdrawn)

2896-10-HS: Dollarama L.P. (Applicant) v. Neda Imani and, Carol Graziosi, Inspector (Respondent) (Withdrawn)

0015-11-HS: Cardiomatters Diagnostics (Applicant) v. Tatiana Nikolsky, Michelle Moldes, Ilia Khurin, Helena Arkanov, Faisa Husak, Corey Needmyer, Lori Cowitz, Sandra Bendgi, Natalia Tesler, Valentina Aronov, Marianna Dyman, Taya Moskovchenko, Nina Kraynikova, Sergyi Kraynikov, Ann Rahinel, Larisa Tchantshapanyan, Olga Voinov and, Carol Graziosi, Inspector (Respondent) (Withdrawn)

PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

2353-10-PS: North Bay General Hospital ("NBGH") and North East Mental Health Centre ("NEMHC") (Applicant) v. Ontario Public Service Employees Union, Local 636 ("OPSEU Local 636"), Ontario Public Service Employees Union, Local 662 ("OPSEU Local 662"), Ontario Public Service Employees Union, Local 666 ("OPSEU Local 666"), Ontario Nurses' Association, Local 2 ("ONA Local 2"), Ontario Nurses' Association, Local 20 ("ONA Local 20"), Canadian Union of Public Employees, Local 139 ("CUPE Local 139"), Canadian Union of Public Employees, Local 1101 ("CUPE Local 1101"), Canadian Union of Public Employees, Local 1623 ("CUPE Local 1623") and, Service Employees International Union, Local 1 ("SEIU Local 1") (Respondent) *(Granted)* Unit: "Unit #1 a service, office and clerical bargaining unit; Unit #2 a paramedical bargaining unit; Unit #3 a RN bargaining unit." (employees in unit)

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

0784-09-ES: Jody Wells (Applicant) v. 1395153 Ontario Ltd. o/a Top Hat Home Comfort Services and, Director of Employment Standards (Respondent) *(Dismissed)*

3417-09-ES: George Thomas Vassallo A Director of Estate #31-1172047 Harwell Hesco Electric Supply Co Limited o/a Hesco Electrical Supply (Applicant) v. Director of Employment Standards, Steve Adams, Mark Beck, John Bianchini, Greg Boileau, Fernando Cabral, Ray Calleja, Lynn Campbell, David Carstens, Mary Anne Clarke, Cristian Contreras, Sheila Cummings, Stella Domanski, Craig Dunlop, Bryan Edwards, Adam Faria, Glen Filazek, Robbie Fitzpatrick, Rob Grant, Kerry Guild, Thoresa Henriques, Bhagwandeen Kasideen, Sarah Keefer, Jim H Koreaar, Jason J Latendre, Robert Lawday, Michael G Lee, Kathleen Lockley, Donald MacMillan, Howard Mandel, Nicholas L Manousos, Meaghan Martell, Michael May, James C Monaghan, Jacqueline Moxham, Amit K Nayak, Edgar Nelmes, Vashti Persaud, Andrew Raich, Ronaghi Latifeh, Shebbon Lord, Robert Shields, Drazen Sinijonovic, Michael P Vassallo, Michael William, Gordon Yu Hasz (Respondent) *(Granted)*

0037-10-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 - Sprinkler Fitters of Ontario (Applicant) - Royal Fire Protection Inc. (Respondent) *(Dismissed)*

2080-10-HS: Dollarama L.P. (Applicant) v. John Reid, Inspector (Respondent) *(Dismissed)*

3704-10-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Kleenway Building Maintenance Services Inc. (Respondent) *(Dismissed)*

PAY EQUITY ACT

0921-10-PE: Thunder Bay Regional Health Sciences Centre (Applicant) v. Canadian Office & Professional Employees Union, Local 96 (Respondent) *(Endorsed Settlement)*

APPEAL - PUBLIC SECTOR COMPENSATION RESTRAINT TO PROTECT PUBLIC SERVICES ACT, 2010

3937-10-RB: Windsor Essex Community Health Centre (Applicant) v. Employees of Windsor Essex Community Health Centre, The Minister of Finance, Shelley Fazekas, Dodie Wilson, Jodi Pearce, Leda Conlon, Jill Conlon-Ray, Stephen Gard, Christina Sandor, Jane Ray, Denise McCann, Vera Rozenbojm, Charlene Salmom, Debbie Doherty, Sonia Barrera, Susan Ellis, E Ann Conrad, Elizabeth Lizzi, Joyce Nixon, Jennifer Johnston, Jennnifer White, Michelle Pittao-Meloche, Alistair Dwyer, Trisha Howlett, Bette Catton, Laura Argoselo, Jennifer Jovanovski, Liz Atkinson, Liz Atkinson, Elizabeth Cusumano, Marion Purcell, Dr Andrew Taylor, Adrian Diett, Teresa Conte, Amy Palmer, Natalie Westfall, Beverly Kaufmann, Vanessa Ryan, Elizabeth Dorego-Paton, Susan Schwarzpech, Filomena Rowley, Dana Stanciu, Joe Parent, Zakia Abouzeeni, Nicole Demant, Ellen Prestia, Tania Colle, Julie Clark, Sue Williams, Lisa Bishop, Michelle Weglarz, Marissa Nowlan, Dawn Johnston, Sandra Dennison, Kathryn Corby, Jennifer Gee, Ann Hucal, Bonnie Kam, Mary Brannagan, Kathy Egypt, Dennis Mcleod, Kara Hayes (Respondent) *(Dismissed)*

4116-10-RB: Marion Overholt (Applicant) v. Legal Assistance of Windsor and, The Minister of Finance (Respondent) *(Granted)*

4133-10-RB: Lutheran Homes Kitchener - Waterloo (Applicant) v. Jaymie Riedl, Kathryn Boergers, Luz Rendon-Alarcon, Debra J. Buhrow, Jane Humphries, Debby Riepert, Laurie Kitchen, Caroline Verleyen, Tim Davidson, Greg Howlett (Respondent) v. The Minister of Finance (Intervener) *(Dismissed)*

CASE LISTINGS MAY 2011

PAGE

1. Applications for Certification 145
2. First Agreement Direction 154
3. Applications for Declaration of Related Employer 154
4. Sale of a Business 154
5. Applications for Declaration Terminating Bargaining Rights 155
6. Complaints of Unfair Labour Practice 157
7. Application for Interim Order 159
8. Applications for Consent to Prosecute 159
9. Jurisdictional Disputes 159
10. Employee Status 159
11. Complaints under the Occupational Health and Safety Act 159
12. Construction Industry Grievances 160
13. Appeals – Employment Standards Act 163
14. Appeals – Occupational Health and Safety Act 171
15. Appeal – Public Sector Compensation Restraint to Protect Public Services Act, 2010 171
16. Public Sector Labour Relations Transition Act, 1997 172
17. Applications for Reconsideration of Board's Decision 172

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING MAY 2011

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

0816-09-R: United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Finn Way General Contractors Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Finn Way General Contractors Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all carpenters and carpenters' apprentices in the employ of Finn Way General Contractors Inc. in all sectors of the construction industry in the District of Thunder Bay and the District of Kenora including the Patricia portion, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

2300-10-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Wingenback Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Wingenback Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all carpenters and carpenters' apprentices in the employ of Wingenback Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

3968-10-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. J.S. Mackay Heating Incorporated c.o.b. as Mackay Advanced Energies (Respondent)

Unit: "all refrigeration and air-conditioning mechanics and all refrigeration and air-conditioning mechanics' apprentices in the employ of J.S. Mackay Heating Incorporated c.o.b. as Mackay Advanced Energies in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all refrigeration and air-conditioning mechanics and all refrigeration and air-conditioning mechanics' apprentices in the employ of J.S. Mackay Heating Incorporated c.o.b. as Mackay Advanced Energies in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand Norfolk coming within the former County of Haldimand, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

4243-10-R: Iron Workers District Council of Ontario (Applicant) v. Mass Industries Inc. (Respondent)

Unit: "all ironworkers and ironworkers' apprentices in the employ of Mass Industries Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all ironworkers and ironworkers' apprentices in the employ of Mass Industries

Inc. in all sectors of the construction industry in the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

0238-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Ducon Utilities Limited (Respondent)

Unit: "all construction labourers in the employ of Ducon Utilities Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all construction labourers in the employ of Ducon Utilities Limited in all sectors of the construction industry in the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

0261-11-R: Construction Workers Local 53 affiliated with the Christian Labour Association of Canada (Applicant) v. Glenile Services Ltd. (Respondent)

Unit: "all plumbers and plumbers' apprentices, all refrigeration mechanics and refrigeration mechanics' apprentices, all sheet metal workers and sheet metal workers' apprentices and all construction labourers in the employ of Glenile Services Ltd. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, and in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

0426-11-R: Ironworkers District Council of Ontario (Applicant) v. Jerdan Door And Frame Ltd. c.o.b. JDF Metal Fabricating (Respondent)

Unit: "all ironworkers and ironworkers' apprentices in the employ of Jerdan Door and Frame Ltd. c.o.b. JDF Metal Fabricating in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all ironworkers and ironworkers' apprentices in the employ of Jerdan Door and Frame Ltd. c.o.b. JDF Metal Fabricating in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

0490-11-R: Canadian Construction Workers Union (Applicant) v. Con Inn Inc. (Respondent)

Unit: "all construction labourers in the employ of Con Inn Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

0549-11-R: Construction Workers Local 52 affiliated with Christian Labour Association of Canada (Applicant) v. Dalron Construction Limited (Respondent)

Unit: "all construction labourers in the employ of Dalron Construction Limited in all sectors of the construction industry in within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman" (12 employees in unit)

Bargaining Agents Certified Subsequent to Vote

3079-09-R: Construction Workers Local 53, affiliated with Christian Labour Association of Canada (CLAC) (Applicant) v. Henry Heyink Construction Ltd. (Respondent) v. Labourers' International Union of North America, Ontario Provincial District Council (Intervener)

Unit: "all construction labourers and all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors employed by Henry Heyink Construction Ltd. in all sectors of the construction industry in Kent and Essex Counties, save and except non-working foremen and persons above the rank of non-working foreman" (23 employees in unit)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots segregated and not counted	0

3184-09-R: Ontario Taxi Workers' Union (Applicant) v. Hamilton Cab Co. o/a Hamilton Cab (Respondent)

Unit: "all employees of Hamilton Cab Co. o/a Hamilton Cab operating as owners and/or drivers of taxi cabs licensed to operate in the City of Hamilton save and except supervisors, dispatchers, multi-car/ multi-plate owners, persons above the rank of dispatcher, office and clerical staff, and independent contractors" (374 employees in unit)

Number of names of persons on revised voters' list	546
Number of persons who cast ballots	357
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	283
Number of segregated ballots cast by persons whose names do not appear on voters' list	68
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	215
Number of ballots marked against applicant	67
Number of ballots segregated and not counted	67

3659-09-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. Sanjak Aluminum Inc. (Respondent) v. Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener)

Unit: "all construction workers of Sanjak Aluminum Inc. engaged in new residential subdivision construction (defined as 3 or more units) in residential low-rise buildings (defined as non- elevated housing of not more than 4 storeys in height excluding basement) in the installation of aluminum and vinyl siding, eavestroughing, soffit and fascia, in the Province of Ontario, save and except the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman, and office and clerical staff." (9 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0046-10-R: Labourers' International Union of North America, Local 625 (Applicant) v. Signature Contractors Windsor Inc. (Respondent)

Unit: "all construction labourers in the employ of Signature Contractors Windsor Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Signature Contractors Windsor Inc. in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

4067-10-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. National Fast Freight, a Division of the Calyx Transportation Group Inc. (Respondent)

Unit: "all employees of National Fast Freight, a Division of Calyx Transportation Group Inc., in the City of Vaughan, save and except supervisors, persons above the rank of supervisor, office and technical and managers" (65 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	69
Number of persons who cast ballots	63
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	51
Number of segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	36
Number of ballots marked against applicant	23
Number of ballots segregated and not counted	4

4310-10-R: Canadian Union of Public Employees (Applicant) v. University of St. Michael's College (Respondent)

Unit: "all employees of the Collegium of the University of St. Michael's College in the City of Toronto engaged in teaching, demonstrating, tutoring or marking/grading, save and except: 1) persons who hold tenured or tenure-stream appointments to the University of St. Michael's College faculty; 2) persons who hold contractually-limited term appointments to the University of St. Michael's College faculty for a term of one year or more; 3) emeritus/a professors of the University of St. Michael's College; 4) persons engaged on an occasional basis by virtue of their particular special expertise to give an occasional or guest lecture or an occasional of guest seminar; 5) status only appointments; 6) persons employed in the continuing education genealogy program offered in affiliation with the National Institute for Genealogical Studies; 7) persons who exercise managerial functions or who are employed in a confidential capacity in matters related to labour relations; and, 8) persons for whom any other trade union held bargaining rights under the Labour Relations Act as of the date of this application to the Ontario Labour Relations Board." (26 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	2

0147-11-R: Ontario Nurses' Association (Applicant) v. Trillium Health Centre (Respondent) v. Canadian Union of Public Employees and its Local 4191 (Intervener)

Unit: "all Registered Nurses and Nurses with a temporary Certificate of Registration engaged in a nursing capacity at Trillium Health Centre in the City of Mississauga and the City of Toronto, save and except Patient Care Coordinators, Transitions of Care Coordinators, Clinical Educators, Occupational Health Nurses, Clinical Nurse Specialists, Nurse Clinicians, managers and persons above the rank of manager and persons for whom any trade union held bargaining rights as of April 13, 2011 and pending the resolution of the status of these categories, excluding as well Advanced Practice Nurses" (1491 employees in unit)

Number of names of persons on revised voters' list	1648
Number of persons who cast ballots	1266
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	989
Number of segregated ballots cast by persons whose names appear on voter's list	264
Number of segregated ballots cast by persons whose names do not appear on voters' list	14
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	795
Number of ballots marked against applicant	352
Number of ballots segregated and not counted	119

0237-11-R: Service Employees International Union Local 2, Brewery, General and Professional Workers' Union (Applicant) v. Schenker of Canada Limited (Respondent) v. UNITE HERE (Intervener)

Unit: "all employees of Schenker of Canada Limited employed at 89 Walker Drive, in the City of Brampton, save and except Supervisors, those above the rank of Supervisor, temporary or agency employees, office and clerical staff, and those for whom another union holds subsisting bargaining rights" (141 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	40
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	115
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	89
Number of ballots marked in favour of intervener	25
Number of ballots segregated and not counted	0

0252-11-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Atlantic Industries Limited (Respondent)

Unit: "all employees of Atlantic Industries Limited in the Regional Municipality of Waterloo save and except Supervisors, persons above the rank of Supervisor, and office, clerical, sales and technical staff, including draftsmen, engineers and engineer technologists" (15 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	2

0282-11-R: International Association of Machinists and Aerospace Workers (Applicant) v. Colortech Inc. (Respondent)

Unit: "all employees of Colortech Inc. employed in the City of Brampton, excluding supervisors and those above the rank of supervisor and clerical and sales employees" (35 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	50
Number of persons who cast ballots	47
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	45
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	18
Number of ballots segregated and not counted	2

0285-11-R: Public Service Alliance of Canada (Applicant) v. Ontario Lottery and Gaming Corporation c.o.b. OLG Slots at Rideau Carleton Raceway (Respondent)

Unit: "all employees of Ontario Lottery and Gaming Corporation c.o.b. OLG Slots at Rideau Carleton Raceway in the City of Ottawa, save and except supervisors/duals and persons above the rank of supervisors/duals, security and surveillance staff, hosts, and office, clerical and scheduling personnel" (140 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	145
Number of persons who cast ballots	142
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	141
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	79
Number of ballots marked against applicant	62
Number of ballots segregated and not counted	1

0297-11-R: Canadian Union of Public Employees (Applicant) v. Specialty-Care Case Manor Inc. (Respondent)

Unit: "all office and clerical employees employed by Specialty-Care Case Manor Inc. in the City of Kawartha Lakes, save and except supervisors, persons above the rank of supervisor, students employed during the school vacation period and employees already represented by a trade union." (4 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0299-11-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Victoria University (Respondent)

Unit: "all employees of Victoria University employed for not more than twenty-four (24) hours per week in the City of Toronto, save and except: a) Persons who regularly work more than 24 hour per week; b) Persons who exercise managerial functions or are employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(b) of the Ontario Labour Relations Act, 1995; c) Persons for whom any trade union or association held bargaining rights on April 26, 2011; d) Academic staff, including but not limited to; (i) members of faculty; (ii) status only appointments; (iii) visiting academic appointments; (iv)tutors; (v) senior tutors; (vi)lecturers; (vii) special lecturers; (viii) librarians; (ix)instructors; (x) scholars and fellows; (xi) sessional appointments; or, (xii) persons hired to teach on a stipend (e)Teaching assistants; (f)Research associates; (g) Tour guides; or, (h) Students enrolled in undergraduate or graduate studies at the University." (51 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	15

Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	5

0303-11-R: Service Employees International Union Local 1 Canada (Applicant) v. Collingwood Nursing Home Limited (Respondent)

Unit: "all Registered Nurses of Collingwood Nursing Home Limited in the city of Collingwood save and except managers, persons above the rank of managers, office and clerical and all persons already represented by another trade union" (6 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

0437-11-R: Service Employees International Union Local 2 Brewery, General and Professional Workers' Union (Applicant) v. Apollo 8 Maintenance Services Inc. (Respondent)

Unit: "all employees of Apollo 8 Maintenance Services Inc. working at 2 Bloor St West, in the City of Toronto, save and except supervisors and persons above the rank of supervisor" (26 employees in unit)

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	19
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	2

Applications for Certification Dismissed Subsequent to Vote

3125-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Henry Heyink Construction Ltd. (Respondent) v. Construction Workers Local 53, affiliated with Christian Labour Association of Canada (Intervener)

0146-11-R: Public Service Alliance of Canada (Applicant) v. Queen's University (Respondent)

Unit: "all persons registered as undergraduate students at Queen's University in the City of Kingston, Ontario, and who are also employed by Queen's University as Teaching Assistants, save and except the following: i) all persons deemed not to be employees for the purposes of the Ontario Labour Relations Act, 1995 pursuant to sections 1(3)(a) and (b); ii) Employees whose work falls within a bargaining unit for which a trade union held bargaining rights on April 13, 2011; and, iii) Full voting members of the Queen's University Board of Trustees" (150 employees in unit)

Number of names of persons on revised voters' list	177
Number of persons who cast ballots	102
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	53
Number of segregated ballots cast by persons whose names appear on voter's list	34
Number of segregated ballots cast by persons whose names do not appear on voters' list	15
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	42
Number of ballots segregated and not counted	49

0456-11-R: Teamsters Local Union No. 419 (Applicant) v. Turtle Island Recycling Corporation (Respondent)

Unit: "all employees of Turtle Island Recycling Corporation based in York Region in the Province of Ontario save and except supervisors, persons above the rank of supervisor, office, clerical, sales staff and students." (48 employees in unit)

Number of names of persons on revised voters' list	59
Number of persons who cast ballots	62
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	53
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	36
Number of ballots segregated and not counted	7

Applications for Certification Withdrawn

1544-07-R; 1549-07-R; 1550-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Clean Water Works Inc. (Respondent)

1582-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Pristine Homes and/or Pristine Homes Inc. and/or Pristine Homes (Whitby) Inc. (Respondent)

0263-10-R: Amalgamated Transit Union, Local 113 (Applicant) v. Can-Ar Transit Services (Division of Tokmakjian Limited) (Respondent)

1401-10-R: Teamsters Local Union No. 419 (Applicant) v. Tomato King 2010 Inc. (Respondent)

2612-10-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Toromont Industries Ltd. c.o.b. as Climate Control (Respondent)

3573-10-R: Christian Labour Association of Canada (Applicant) v. Baxter Corporation (Respondent)

4108-10-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Watt Worx Electrical Corp. (Respondent)

4312-10-R: Ontario Nurses' Association (Applicant) v. Niagara Health System (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

0283-11-R: Ontario Council of Construction Unions (Applicant) v. Quatro Construction Ltd. (Respondent) v. Labourers' International Union of North America, Local 837, Universal Workers Union, Labourers' International Union of North America, Local 183 (Intervener)

0509-11-R: Construction Workers, Local 53 affiliated with Christian Labour Association of Canada (Applicant) v. 1777673 Ontario Limited c.o.b. as CCI (Respondent)

0644-11-R: L'Association des agentes et agents en relation de travail (AART) (Applicant) v. L'Association des enseignantes et des enseignantes franco-ontariens (AEFO) (Respondent)

FIRST AGREEMENT - DIRECTION

0097-11-FC: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Aaroport Limousine Services Ltd., McIntosh Limousine Service Ltd. and Aircab Limousine Services (1985) LTD. (Respondent) *(Granted)*

0507-11-FC: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Boehmer Box LP (Respondent) *(Terminated)*

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

0542-09-R; 0543-09-R: United Food and Commercial Workers Canada, Local 175 (Applicant) v. St. Davids Cold Storage, Sun Capital Partners, Inc., R.G. Hummel Group Inc. and, Cannery Park Developments Inc. (Respondent); United Food and Commercial Workers Canada, Local 175 (Applicant) v. Niagara Natural Fruit Snacks Inc., R.G. Hummel Group Inc., Sun Capital Partners, Inc. and, CanGro Fruit Inc., Cannery Park Developments Inc. (Respondent) *(Dismissed)*

3355-09-R: Communications, Energy and Paperworkers Union of Canada Local 87-M (Southern Ontario Newsmedia Guild) (Applicant) v. Quebecor Media Inc., Sun Media Corporation, Bowes Publishers Limited, a Division of Sun Media Corporation, Simcoe Reformer, a Division of Sun Media Corporation;, Tillsonburg News, a Division of Sun Media Corporation and, Sun Media Centre of Excellence for Pre-Press and Ad Production for South Central Ontario, a Division of Sun Media Corporation, The Observer, a Division of Sun Media Corporation, The Southwest Regional Editorial Pagination Centre, a Division of Sun Media Corporation, The Sun Media Corporate Graphics Department at London, a Division of Sun Media Corporation, The London Free Press, a Division of Sun Media Corporation and The Woodstock Sentinel-Review (Respondent) *(Withdrawn)*

SALE OF A BUSINESS

0542-09-R; 0543-09-R: United Food and Commercial Workers Canada, Local 175 (Applicant) v. St. Davids Cold Storage, Sun Capital Partners, Inc., R.G. Hummel Group Inc. and, Cannery Park Developments Inc. (Respondent); United Food and Commercial Workers Canada, Local 175 (Applicant) v. Niagara Natural Fruit Snacks Inc., R.G. Hummel Group Inc., Sun Capital Partners, Inc. and, CanGro Fruit Inc., Cannery Park Developments Inc. (Respondent) *(Dismissed)*

3355-09-R: Communications, Energy and Paperworkers Union of Canada Local 87-M (Southern Ontario Newsmedia Guild) (Applicant) v. Quebecor Media Inc., Sun Media Corporation, Bowes Publishers Limited, a Division of Sun Media Corporation, Simcoe Reformer, a Division of Sun Media Corporation;, Tillsonburg News, a

Division of Sun Media Corporation and, Sun Media Centre of Excellence for Pre-Press and Ad Production for South Central Ontario, a Division of Sun Media Corporation, The Observer, a Division of Sun Media Corporation, The Southwest Regional Editorial Pagination Centre, a Division of Sun Media Corporation, The Sun Media Corporate Graphics Department at London, a Division of Sun Media Corporation, The London Free Press, a Division of Sun Media Corporation and The Woodstock Sentinel-Review (Respondent) *(Withdrawn)*

3645-09-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 504 (Applicant) v. Selkirk Canada Corporation and, Tomkins Inc. (Respondent) *(Withdrawn)*

1174-10-R: International Brotherhood of Electrical Workers Local Union 1687 (Applicant) v. El-Com Systems, North Shore Electric and Topline Electric Limited (Respondent) *(Dismissed)*

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

3619-03-R: Paul Lemay (Applicant) v. Labourers' International Union of North America, Local 527 (Respondent) v. Nicolini Construction and Engineering Ltd. (Intervenor)

0302-10-R: Brian Oliveira (Applicant) v. Brick and Allied Craft Union of Canada, Local 5 (Respondent) *(Granted)*

Unit: "all marble, tile and terrazzo, cement masons and resilient floor layers and helpers, their respective apprentices, improvers and working foremen in the employ of Bernardo Group Limited in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin." (1 employee in unit)

0398-10-R: Trevor Boyde (Applicant) v. The International Brotherhood of Electrical Workers and its Local 1739 (Respondent) v. B.C. North Contracting of Muskoka Ltd. c.o.b. as B.C. North Electric (Intervener) *(Dismissed)*

Unit: "all foremen, journeyman wiremen, instrumentation electricians, apprentices, pre-apprentices, journeyman linemen (powerline technician)-splicers, apprentice linemen-splicers, groundman/equipment operators, groundman/drivers, groundmen, utilitymen, foresters, communication electricians, journeymen and apprentice network cabling specialists/communication technicians, and communication cable installers performing work within the acknowledged jurisdiction of the union, as defined in section 151(2) of the OLRA, employed by B.C. North Contracting of Muskoka Ltd. c.o.b. as B.C. North Electric in the Province of Ontario in the ICI sector of the construction industry." (1 employee in unit)

2740-10-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Canadian National Federation of Independent Unions (Respondent) *(Withdrawn)*

3311-10-R: 667589 Ontario Inc. (operating as North Point Services) and/or Eastview Developments Limited and/or PML Traders Ltd. (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) *(Dismissed)*

0225-11-R: Robert W. Mitchell (Applicant) v. Teamsters Local Union No. 879 (Respondent) *(Granted)*

Unit: "all employees of Lafarge Canada Inc. at its cement plant in the Town of Waterford, save and except batcher, persons above the rank of batcher, sales and office staff." (4 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	4
Number of ballots segregated and not counted	0

0274-11-R: Brandy Perry & Employees of Hawk Residential Care and Treatment Homes Inc. (Applicant) v. Service Employees International Union Local 1 Canada (Respondent) v. Hawk Residential Care and Treatment Homes Inc. (Intervener) *(Dismissed)*

Unit: "all employees of Hawk Residential Care and Treatment Homes Inc. in the city of Kawartha Lakes save and except house supervisor and persons above that rank" (33 employees in unit)

0335-11-R: John Risto (Applicant) v. Construction Workers Local 53, affiliated with Christian Labour Association of Canada (Respondent) *(Granted)*

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers, or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors, construction labourers and truck drivers in the employ of Coores Construction Inc. in all sectors of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman" (1 employee in unit)

0388-11-R: Employees of Hakim Optical (Applicant) v. CAW Union - Local 303 (Respondent) (Terminated)

0441-11-R: Shawn Corris and Jeff Hinks (Applicant) v. Communications, Energy and Paperworkers Union of Canada (Respondent) v. Boehmer Box LP (Intervener) *(Granted)*

Unit: "all employees of Boehmer Box LP in the City of Kitchener, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff." (228 employees in unit)

Number of names of persons on revised voters' list	228
Number of persons who cast ballots	195
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	194
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	90
Number of ballots marked against respondent	104
Number of ballots segregated and not counted	1

0445-11-R: Beverly Ladouceur (Applicant) v. Service Employees International Union Local 1 Canada (Respondent) *(Dismissed)*

0477-11-R: Employees of Hakim Optical (Applicant) v. CAW Union - Local 303 (Respondent) v. Hakim Optical Laboratory Ltd. (Intervener) *(Granted)*

Unit: "all employees of Hakim Optical Laboratory Ltd. working at 1325 The Queensway, in the City of Toronto, save and except managers, except persons above the rank of manager, retail sales staff and office and clerical staff." (60 employees in unit)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

3792-Y3-U; 3866-03-U: Labourers International Union of North America, Local 527 (Applicant) v. Nicolini Construction & Engineering Limited (Respondent) *(Dismissed)*

3945-06-U: Teamsters Local Union 847 (Applicant) v. G & K Services Canada Inc. (Respondent) *(Terminated)*

0594-07-U: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Applicant) v. Aecon Group Inc., Geo. A. Kelson Company Limited, Bellevue Fabricating Ltd./Bay-Shore Maintenance Ltd./Bay-Shore Industrial Contractors Ltd. (Respondent) *(Dismissed)*

1690-07-U: Labourers' International Union of North America, Ontario Provincial District Council and International Union of Operating Engineers, Local 793 (Applicant) v. Clean Water Works Inc. (Respondent) *(Withdrawn)*

2980-07-U: Adhin Sukhu (Applicant) v. Ontario Public Service Employees Union (Respondent) v. Centennial College of Applied Arts and Technology (Intervener) *(Withdrawn)*

0339-09-U: William Cuthill (Applicant) v. Communications, Energy and Paperworkers Union of Canada, Local 591G (Respondent) v. Annan & Bird Lithographers Ltd. (Intervener) *(Dismissed)*

0819-09-U: United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Finn Way General Contractors Inc., David Karimi, Jeff Bedard, Pat Oulette and Frank Bisignano (Respondent) *(Granted)*

2031-09-U; 2123-09-U: Labourers' International Union of North America, Local 1059 (Applicant) v. Lavis Contracting Co. Limited and, Gord Lavis (Respondent); Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Lavis Contracting Co. Limited and, Gord Lavis (Respondent) *(Withdrawn)*

2663-09-U: Doyle Brown (Applicant) v. United Steelworkers of America, Local 9042 (Respondent) *(Dismissed)*

3126-09-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Henry Heyink Construction Ltd., Construction Workers Local 53, Christian Labour Association of Canada, Scott MacLeod, Joe Calabrese and Richard Woodwick (Respondent) *(Granted)*

0444-10-U: Reynaldo Ravao, Marcelo Romero, John Maloney, Harry Horn, Doug Brown, Delfin Agamata, Salvatore Vella, Mohamad Javid, Rodrigo Achiles, Mohamad Khokar, Kenny Ko (Applicant) v. United Steelworkers (Respondent) *(Dismissed)*

1271-10-U: Luigi Miceli (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 508 (Respondent) *(Dismissed)*

1557-10-U: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 - Sprinkler Fitters of Ontario (Applicant) v. Royal Fire Protection Inc. (Respondent) *(Dismissed)*

1855-10-U: John Reis (Applicant) v. Amalgamated Transit Union Local 1572 (Respondent) *(Dismissed)*

1994-10-U: Jeffery Swaby (Applicant) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Respondent) v. Rose E. Dee (International) Ltd. (Intervener) *(Dismissed)*

2086-10-U: Communications, Energy and Paperworkers Union of Canada Local 87-M (Southern Ontario Newsmedia Guild) (Applicant) v. Quebecor Media Inc., Sun Media Corporation, The Observer, a Division of Sun Media Corporation and, The Southwest Regional Editorial Pagination Centre, a Division of Sun Media Corporation (Respondent) *(Withdrawn)*

2321-10-U: Labourers' International Union of North America, Local 625 (Applicant) v. Stuart Gobbo, Robert Soulliere and, Soulliere Solutions Inc. (Respondent) *(Withdrawn)*

2439-10-U: Theresa Leon, Melissa Holmes and Catherine Gesza (Applicant) v. IBEW Local 636 (Respondent) v. The Corporation of the City of Kitchener (Intervener) *(Dismissed)*

2690-10-U: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Toromont Industries Ltd. c.o.b. as Climate Control (Respondent) *(Withdrawn)*

2970-10-U: International Association of Machinists and Aerospace Workers (Applicant) v. Renin Corp. (Respondent) *(Withdrawn)*

2980-10-U: John Meriano (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1285 (Respondent) *(Dismissed)*

2991-10-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Kingsville Court Retirement Residence (Respondent) *(Withdrawn)*

3001-10-U: Krystyna Susla (Applicant) v. Canadian Union of Public Employees, Local 79 (Respondent) v. Corporation of the City of Toronto (Intervener) *(Dismissed)*

3459-10-U: The Ontario Public Service Employees Union (Applicant) v. Niagara Child and Youth Services (Respondent) *(Withdrawn)*

3521-10-U: Service Employees International Union, Local 1 Canada (Applicant) v. Victorian Order of Nurses for Canada - Ontario Branch (Respondent) *(Withdrawn)*

3560-10-U: United Food and Commercial Workers Union, Local 1977 (Applicant) v. Cobblestone Gardens Ltd. (Respondent) *(Withdrawn)*

3575-10-U: Christian Labour Association of Canada (Applicant) v. Baxter Corporation (Respondent) *(Withdrawn)*

3642-10-U: Dave Graham (Applicant) v. Communications, Energy & Paperworkers Union of Canada, Local 90 (Respondent) v. AbiBow Canada Inc. (Intervener) *(Dismissed)*

3652-10-U: Kathryn Kerr, Janine Leblanc, Jayne Michaelis, Ruby McCaffrey, Beverly Persyn, Kate Brode, Amy Oliver, Christene Ng, Colette Raham (Applicant) v. The Canadian Union of Public Employees (CUPE) Local 543 (Respondent) v. Corporation of the City of Windsor (Intervener) *(Dismissed)*

3760-10-U: Jodi-Anne Formosi (Applicant) v. Ontario English Catholic Teachers' Association (Respondent) v. Halton Catholic District School Board (Intervener) *(Withdrawn)*

3766-10-U: Hansmattie Persaud (Applicant) v. Communications, Energy and Paperworkers Union of Canada, Local 6006 (Respondent) *(Withdrawn)*

3853-10-U: Retired Staff Representatives of the CAW-Canada (Applicant) v. The Union of Canadian CAW Staff Representatives (Respondent) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Intervener) *(Dismissed)*

3858-10-U: Michael Wilson (Applicant) v. Teamsters Local Union 847 (Respondent) v. Maple Leaf Sports & Entertainment Ltd. (Intervener) *(Withdrawn)*

3946-10-U: Local 1764 of the Canadian Union of Public Employees (Applicant) v. The Regional Municipality of Durham (Respondent) *(Withdrawn)*

4099-10-U: Wendy Kelly (Applicant) v. The Independent Union of Precision Diecasters (Respondent) v. Dynacast Canada Inc. (formerly known as Fishercast Ltd.) (Intervener) *(Withdrawn)*

4167-10-U: Service Employees International Union Local 1 Canada (Applicant) v. Ontario Workers' Union and Tim Oribine (Respondent) v. Humber River Regional Hospital, Mount Sinai Hospital (Intervener) *(Dismissed)*

4199-10-U: Service Employees International Union, Local 1 Canada (Applicant) v. Sunrise of Unionville (Respondent) *(Withdrawn)*

4324-10-U: Jesse Boles (Applicant) v. United Food & Commercial Workers Canada, Local 175 (Respondent) v. Cargill Limited (Intervener) *(Dismissed)*

0126-11-U: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 1702786 Ontario Inc. (Respondent) *(Withdrawn)*

0457-11-U: Teamsters Local Union No. 419 (Applicant) v. Turtle Island Recycling Corporation (Respondent) *(Withdrawn)*

APPLICATION FOR INTERIM ORDER

0128-11-M: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 1702786 Ontario Inc. (Respondent) *(Withdrawn)*

0458-11-M: Teamsters Local Union No. 419 (Applicant) v. Turtle Island Recycling Corporation (Respondent) *(Withdrawn)*

APPLICATIONS FOR CONSENT TO PROSECUTE

0272-11-U: Service Employees International Union, Local 1 Canada (Applicant) v. Ontario Workers' Union and Tim Oribine (Respondent) *(Dismissed)*

JURISDICTIONAL DISPUTES

0671-07-JD: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Applicant) v. Aecon Group Inc., Geo. A. Kelson Company Limited, Bellevue Fabricating Ltd./Bay-Shore Maintenance Ltd./Bay-Shore Industrial Contractors Ltd., International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Respondent) *(Dismissed)*

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

2717-10-M: The Corporation of Haldimand County (Applicant) v. Canadian Union of Public Employees and its Local 4700 (Haldimand) (Respondent) *(Withdrawn)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

0515-09-OH; 0516-09-OH; 0517-09-OH; 0518-09-OH; 0519-09-OH; 0520-09-OH; 0521-09-OH; 0522-09-OH; 0523-09-OH; 0524-09-OH: John Wotton (Applicant) v. Vale Inco Limited and Mike Beland (Respondent); Paul Ramey (Applicant) v. Vale Inco Limited and Mike Beland (Respondent); Marc Lachance (Applicant) v. Vale Inco

Limited and Mike Beland (Respondent); Chad Cameron McLeod (Applicant) v. Vale Inco Limited and Michael Beland (Respondent); Dave Warenda (Applicant) v. Vale Inco Limited and Mike Beland (Respondent); Reginald Labrosse (Applicant) v. Vale Inco Limited and Mike Beland (Respondent); Robert Tessier (Applicant) v. Vale Inco Limited and Mike Beland (Respondent); Gilles Adam (Applicant) v. Vale Inco Limited and Mike Beland (Respondent); Roger Richer (Applicant) v. Vale Inco Limited and Mike Beland (Respondent); Wayne Nichols (Applicant) v. Vale Inco Limited and Mike Beland (Respondent)*(Withdrawn)*

1993-10-OH: Jeffery Swaby (Applicant) v. Rose E. Dee (International) Ltd. (Respondent) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Intervener) *(Dismissed)*

2037-10-OH: Gabriel Olum (Applicant) v. Ehab Sadik (Respondent) *(Dismissed)*

2888-10-OH: Malcolm Ironmonger (Applicant) v. Moe Zahed (Respondent) *(Dismissed)*

3427-10-OH: Lisa Peck and Christine Chartier (Applicant) v. Forsythe Lubrication Associates Limited, Petroleum Distributors of Quality Inc., c.o.b. Bulk Sealer and, Forsythe Holdings Limited (Respondent) *(Terminated)*

3620-10-OH: Chantal Perrin (Applicant) v. Reisler Franklin LLP (Respondent) *(Withdrawn)*

3755-10-OH: Jodi-Anne Formosi (Applicant) v. Halton Catholic District School Board (Respondent) v. Ontario English Catholic Teachers' Association (Intervener) *(Withdrawn)*

3846-10-OH: Barry Teasdale (Applicant) v. Carleton Condominium Corp # 476 (Respondent) *(Withdrawn)*

4074-10-OH: Douglas A. Fidler (Applicant) v. Multiple Enterprises Inc., c.o.b. as Bruce Service Sales & Rentals (Respondent) *(Withdrawn)*

4081-10-OH: Dwight Pierce (Applicant) v. First Nickel Inc., Vic Rivard, Stan McDonald, Rick Grzelak (Respondent) *(Withdrawn)*

4245-10-OH: Sarah Kennedy (Applicant) v. Dr. J. Michael Woo (Respondent) *(Withdrawn)*

0032-11-OH: Tyler Minogue (Applicant) v. Chatham Tire Inc. (Respondent) *(Withdrawn)*

0117-11-OH: Mike Sweiger (Applicant) v. City Stone (Respondent) *(Terminated)*

CONSTRUCTION INDUSTRY GRIEVANCES

4047-Y3-G: Labourers' International Union of North America, Local 527 (Applicant) v. Nicolini Construction & Engineering Ltd. (Respondent) *(Dismissed)*

0595-07-G; 0596-07-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Applicant) v. Aecon Industrial Inc. division of Aecon Group Inc. (Respondent) *(Dismissed)*

2478-09-G; 1753-10-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Networks Inc. (Respondent) *(Granted)*

0995-10-G; 1037-10-G: Universal Workers' Union, Labourers' International Union of North America, Local 183 (Applicant) v. STG Construction Ltd. and/or, Sebco Contracting Ltd. (Respondent); International Union of Operating Engineers Local 793 (Applicant) v. STG Construction Ltd. and/or, SEBCO Contracting Ltd. (Respondent) *(Withdrawn)*

1569-10-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. 1000690 Ontario Inc. o/a Liza Homes (Respondent) *(Granted)*

1678-10-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Mike Betti, a sole proprietor, c.o.b. Metro Forming and, Metro Forming Ltd. (Respondent) *(Terminated)*

3050-10-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. E.P. Electrical Contracting Ltd. and, Sourges N. Investments Ltd. (Respondent) *(Terminated)*

4003-10-G: Labourers' International Union of North America, Local 506 (Applicant) v. Vanbots, a Division of Carillion Construction Inc. (Respondent) *(Withdrawn)*

4035-10-G: Labourers' International Union of North America, Local 506 (Applicant) v. Ferro Canada Inc. (Respondent) *(Terminated)*

4168-10-G: International Brotherhood of Electrical Workers Electrical Power Council of Ontario (Applicant) v. Comstock Canada Ltd. (Respondent) *(Withdrawn)*

4206-10-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. J.J. McGuire General Contractors Inc. (Respondent) *(Withdrawn)*

0046-11-G: Construction Workers Local 52 affiliated with Christian Labour Association of Canada (Applicant) v. DECC Electrical Inc. (Respondent) *(Withdrawn)*

0072-11-G: United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Soubliere Interiors Ltd. (Respondent) *(Granted)*

0138-11-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) *(Withdrawn)*

0149-11-G: International Brotherhood of Electrical Workers, Local 530 (Applicant) v. 1230951 Ontario Inc. c.o.b. as Bliant (Respondent) *(Endorsed Settlement)*

0154-11-G: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 787 (Applicant) v. Douglass Mechanical Services Limited (Respondent) *(Granted)*

0159-11-G: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States, Local Union 599 (Applicant) v. Roberts Onsite Inc. (Respondent) *(Withdrawn)*

0209-11-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. TCG Steel Enterprises Inc. (Respondent) *(Endorsed Settlement)*

0220-11-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Roberts Onsite Inc. (Respondent) *(Withdrawn)*

0222-11-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. CAP Concrete Structures Ltd., Domenic Attisano, Francisco Teixeira and, Patrick DiFranco (Respondent) *(Granted)*

0240-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Silver Concrete Pumping Ltd. (Respondent) *(Terminated)*

0249-11-G: Sheet Metal Workers' International Association, Local 537 (Applicant) v. 6886523 Canada Inc. c.o.b. as VIP Installations (Respondent) *(Granted)*

0268-11-G: Universal Workers Union, LIUNA Local 183 (Applicant) v. H & R Developments and/or Cantertrot Investments Limited (Respondent) *(Granted)*

0270-11-G: United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. Metro Drywall Contracting Ltd., Drago Jelic (Director) and Brala Zarko (Director) (Respondent) *(Granted)*

0275-11-G: Labourers' International Union of North America, Local 1059 (Applicant) v. 2191434 Ontario Inc. o/a Elgin Construction (Respondent) *(Granted)*

0286-11-G: International Brotherhood of Electrical Workers, Local 804 (Applicant) v. Robertson Bright Inc. (Respondent) *(Withdrawn)*

0301-11-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Diamond Drywall Contracting Inc. (Respondent) *(Withdrawn)*

0311-11-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Edward C. Kosciuch c.o.b. as All City Drywall & Acoustics/ All City Drywall and Acoustics Inc. (Respondent) *(Endorsed Settlement)*

0312-11-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Prisma Construction Inc. (Respondent) *(Withdrawn)*

0315-11-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (Hereinafter known as "Carpenter Local Unions Participating in the OPC Trust Funds") (Applicant) v. Architectural Door Services (Respondent) *(Withdrawn)*

0324-11-G: Labourers' International Union of North America, Local 837 (Applicant) v. Dominion Forming Inc. (Respondent) *(Terminated)*

0330-11-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Gilbert Steel Limited (Respondent) *(Withdrawn)*

0355-11-G: The International Union of Painters and Allied Trades, Local Union 114 (Applicant) v. Zenith Aluminum Systems Ltd. (Respondent) *(Withdrawn)*

0386-11-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Denhall Construction Inc. (Respondent) *(Endorsed Settlement)*

0396-11-G: International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Prime Star International Fire Stopping and Smoke Seal, Prime Star International Firestopping, Prime Star International Fire Stopping Inc. (Respondent) *(Endorsed Settlement)*

0404-11-G: The International Union of Painters and Allied Trades, Local 1819 (Applicant) v. Total Contract Glazing Inc. (Respondent) *(Granted)*

0425-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Jones Group Ltd. (Respondent) *(Granted)*

0482-11-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. 1568278 Ontario Inc. o/a Basic Industries Glazing (Respondent) *(Granted)*

0536-11-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. OLAR Limited (Respondent) *(Granted)*

0555-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. T C Contracting Inc. (Respondent) *(Granted)*

0566-11-G: The Formwork Council of Ontario and, Labourers' International Union of North America, Local 1059 (Applicant) v. Tricar Developments Inc. (Respondent) *(Withdrawn)*

0584-11-G: International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Brunco Insulation Ltd. (Respondent) *(Endorsed Settlement)*

0612-11-G: Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Associations of United States and Canada Local 598 (Applicant) v. Paclaw Building Restoration Inc. (Respondent) *(Withdrawn)*

0646-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Fortex Excavating Inc. (Respondent) *(Granted)*

APPEALS - EMPLOYMENT STANDARDS ACT

2640-07-ES: Broderick Carey (Applicant) v. CAW Local 636, Director of Employment Standards (Respondent) *(Dismissed)*

1674-08-ES: John Nestor, a Director of Canada Wood Specialties Inc. (Applicant) v. Scott Austin, Betty Beach, Lorne Beemer, Lise Beauchemin, Stephen Bursey, The Estate Of Ira A. Cleaveley, Ed Dolan, Marlyn English, Holly Hand, Thomas Hendry, Luke Johnston, Donald Joseph, Murray Langley, Robert Merritt, Darcy Osborne, Gary Rigarlsford, William J. Rolston, Terri Thornton, Blaine Tinney, Director of Employment Standards (Respondent) *(Granted)*

3569-08-ES: 8751856 Canada Inc., o/a S5Systems (Applicant) v. Yixin Wang and, Director of Employment Standards (Respondent) *(Granted)*

2324-09-ES: Eugenie Budulan (Applicant) v. Carlos Gallas, Director of Employment Standards (Respondent) *(Dismissed)*

3489-09-ES: Tashi Lhamo (Applicant) v. Nasr Foods Inc., Keysar Nasr, 2226342 Ontario Corp. o/a Rami's Mediterranean Markets and, Director of Employment Standards (Respondent) *(Withdrawn)*

0524-10-ES: Sajid Anjum (Applicant) v. World Media Corp. (Canada) Inc. o/a Can-India News and, Director of Employment Standards (Respondent) *(Granted)*

0560-10-ES: Instaloans Inc. (Applicant) v. Jenni Whalen, Stephanie Peletz, Kerri Ostroski, Jennifer Luck, Cassandra Fournier, Shannon Caudle, Kylie Gallant, Debra Keefe, Bobb-Jo Miller, Larissa Turco, Karen (Speers) Wilson and, Director of Employment Standards (Respondent) *(Granted)*

0572-10-ES: Energy Vision Inc. (Applicant) v. Sara Duncan and, Director of Employment Standards (Respondent) *(Granted)*

0893-10-ES: Just Energy Corp. (Applicant) v. Baldeesh (Lisa) Dhillon and, Director of Employment Standards (Respondent) *(Granted)*

0924-10-ES: Rite Way Auto Body (1995) Ltd. (Applicant) v. Paul Foreman and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1228-10-ES: Imperial Parking Canada Corporation (Applicant) v. James Sutherland and, Director of Employment Standards (Respondent) *(Dismissed)*

1531-10-ES: Ontario Line Clearing & Tree Services Limited o/a Ontario Line Clearing & Tree Service (Applicant) v. Gyula Bognar and, Director of Employment Standards (Respondent) *(Granted)*

1546-10-ES: Katherine Holmes (Applicant) v. ARXX Building Products Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

1633-10-ES: St. Joseph Print Group Inc. (Applicant) v. Leslie Klett and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1872-10-ES: Young Chul Yoon operating as Carlton Tavern (Applicant) v. Mark Bedini and, Director of Employment Standards (Respondent) *(Dismissed)*

1946-10-ES: Artist Choice (Applicant) v. Sienna King and, Director of Employment Standards (Respondent) *(Dismissed)*

2000-10-ES: Marcelle Shayda (Applicant) v. Aditya Birla Minacs Worldwide Inc. o/a Aditya Birla Minacs and, Director of Employment Standards (Respondent) *(Dismissed)*

2134-10-ES: Claire Lasers Corporation (Applicant) v. James T. Dam and, Director of Employment Standards (Respondent) *(Withdrawn)*

2266-10-ES: Michael J. Thomas (Applicant) v. United Malwood Merchants Inc. o/a Canadian Tire Associate Store #457 and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2332-10-ES: Process Group Inc. (Applicant) v. Tony Cruz and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2335-10-ES: A-Rapid Rooter Sewer & Drain Service Inc. (Applicant) v. Tony Toughlajian and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2336-10-ES: A-Rapid Rooter Sewer & Drain Service Inc. (Applicant) v. Craig Buchanan and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2357-10-ES: Kelvin Tynes (Applicant) v. Printer Gateway Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

2409-10-ES: Vasili Zgonnik (Applicant) v. 603418 Ontario Inc. o/a J.P. Motor Sales and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2422-10-ES: Aiqin (Lucy) Zhou (Applicant) v. Canada Financial Group Inc. o/a Elite Nails & Spa and, Director of Employment Standards (Respondent) *(Granted)*

2471-10-ES: Patrick Germann Developments (Applicant) v. Robert McDaid, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2476-10-ES: Matthew Calicchia (Applicant) v. 2210114 Ontario Inc. o/a Puck'N Wings Plus Newmarket and, Director of Employment Standards (Respondent) *(Granted)*

2477-10-ES: Daniel Calicchia (Applicant) v. 2210114 Ontario Inc. o/a Puck'N Wings Plus Newmarket and, Director of Employment Standards (Respondent) *(Granted)*

2498-10-ES: Feng Yan Chen (Applicant) v. Cericola Farms Limited, Director of Employment Standards (Respondent) *(Withdrawn)*

2640-10-ES: Co-Up Towing Services Ltd. (Applicant) v. Ryan Cohen and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2680-10-ES: Dounya Sahibzada (Applicant) v. 1432894 Ontario Inc., Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2716-10-ES: Abbey Road Pub & Patio Corp. (Applicant) v. Rose Kronschnabl and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2728-10-ES: David G. Dinan (Applicant) v. Partners Indemnity Insurance Brokers Ltd. and, Director of Employment Standards (Respondent) *(Dismissed)*

2750-10-ES: K Scrap Resources Ltd. (Applicant) v. Sandra Bechard and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2813-10-ES: Cozza Bros. Excavating Ltd. (Applicant) v. David Landman and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2836-10-ES: Emerald Roofing (Applicant) v. Thomas Dredge, Director of Employment Standards (Respondent) *(Granted)*

2843-10-ES: 1644536 Ontario Ltd. operating as Harry's Family Restaurant (Applicant) v. Liza Bechard and, Director of Employment Standards (Respondent) *(Dismissed)*

2931-10-ES: Axiom Millwrighting & Fabrication Inc. (Applicant) v. William Pearce and, Director of Employment Standards (Respondent) *(Granted)*

2932-10-ES: Jennifer Morrison (Applicant) v. 2011090 Ontario Inc. Econolodge Hotel, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2957-10-ES: Omni Facility Services Canada Limited o/a Omni Facility Services (Applicant) v. Indrani Johnson and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2958-10-ES: Omni Facility Services Canada Limited o/a Omni Facility Services (Applicant) v. Nagarajah Kriahanthikumar and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3009-10-ES: Paul Gallagher (Applicant) v. Potter Pumping Services Limited and, Director of Employment Standards (Respondent) *(Dismissed)*

3011-10-ES: Mario W.D. Lulay (Applicant) v. Gary Stockie Motors Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3107-10-ES: Active Tire & Auto Centre Inc. (Applicant) v. Michael Hassett and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3108-10-ES: Active Tire & Auto Centre Inc. (Applicant) v. Mark Mago and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3109-10-ES: Active Tire & Auto Centre Inc. (Applicant) v. Frank Csemi and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3118-10-ES: Kenneth McCarty (Applicant) v. Altrom Canada Corp./Corporation Altrom Du Canada and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3153-10-ES: Ganaraska Credit Union Ltd. (Applicant) v. Kimbirley Botrie, and Director of Employment Standards (Respondent) *(Dismissed)*

3164-10-ES: Gifted Hands (2002) Ltd. operating as Gags N' Giggles (Applicant) v. Kaitland McQuaid, Director Of Employment Standards (Respondent) *(Endorsed Settlement)*

3167-10-ES: Gifted Hands (2002) Ltd. operating as Gags 'N' Giggles (Applicant) v. Joleene Bertrand and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3210-10-ES: Imperial Chilled Juice Inc. (Applicant) v. Aysha Mobin and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3219-10-ES; 3220-10-ES: Christine Richards aka Christine Templeton o/a The Canadian Institute of Alternative operating as Heaven Scent (Applicant) v. Andrea Price and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3222-10-ES: John's Restaurant & Gifts Limited (Applicant) v. Director of Employment Standards (Respondent) *(Granted)*

3258-10-ES: Raymond Wayne Dudgeon (Applicant) v. 1324560 Ontario Limited o/a Boyer Chevrolet and, Director of Employment Standards (Respondent) *(Withdrawn)*

3272-10-ES: Stock Transportation (Applicant) v. Lynn Lamoureux, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3275-10-ES: 1760833 Ontario Ltd. operating as Urbana Coffee (Applicant) v. Catherine Ramirez and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3281-10-ES: Carriage Hills Resort Corporation (Applicant) v. Rosemary Garrett and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3282-10-ES: Carriage Hills Resort Corporation (Applicant) v. Judith Taylor and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3284-10-ES: 1543411 Ontario Inc. o/a Willowside Family Restaurant (Applicant) v. Chanel Mitchell and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3298-10-ES: Dr. Debra Shoniker Dentistry Professional Corporation (Applicant) v. Joanne Ninivaggi and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3301-10-ES: Linda Desmarais (Applicant) v. 7245947 Canada Inc. / Rumble Inn Tavern and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3305-10-ES: John Spencer (Applicant) v. Leslie Sonya Backus Knights Gate Hanoverians, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3444-10-ES: 1634705 Ontario Inc. operating as Quality Inn Parry Sound (Applicant) v. Shari E. Smith and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3457-10-ES: ATL Industries Inc. o/a ATL Industries Partnership Inc. (Applicant) v. Allan Conway and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3503-10-ES: 2230475 Ontario Inc. o/a Sunflower Flowers & Gifts (Applicant) v. Vesna Jevtic and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3571-10-ES: Dominique Kamras (Applicant) v. Cara Operations Limited/Entreprises Cara Limitee and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3597-10-ES: Crawford & Company (Canada) Inc. (Applicant) v. Ms. Leslie Stevens and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3644-10-ES: Dr. Marlyn Yole (Applicant) v. Ashley Farrell and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3666-10-ES: 709226 Ontario Limited o/a Dilawri Jeep Dodge Chrysler (Applicant) v. Andrew Frei and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3685-10-ES: Mohammad Farhan Chaudhary (Applicant) v. Eiwo Canadian Management Ltd. and 1218390 Alberta Ltd. o/a Mornington Place Limited Partnership, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3688-10-ES: Dzemma Chaudhary (Applicant) v. Eiwo Canadian Management Ltd. and 1218390 Alberta Ltd. o/a Mornington Place Limited Partnership, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3702-10-ES: 1761835 Ontario Limited o/a J'Adore (Applicant) v. Monika Sawicka and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3754-10-ES: Fazale H. Laxmidhar o/a Laxmidhar Residential and Commercial Property (Applicant) v. Mujahid Abdulkader and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3800-10-ES: Martyn Bassett Associates Inc. (Applicant) v. Egidius Hermsen, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3818-10-ES: Shama Akbar (Applicant) v. Wal-Mart Canada Corp./La Compagnie Wal-Mart du Canada and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3851-10-ES: Norak Steel Construction Ltd. (Applicant) v. Maurice Afara, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3873-10-ES: 1022928 Ontario Inc. o/a Bath Fitter (Applicant) v. Robert Turpin and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3874-10-ES: 1022928 Ontario Inc. o/a Bath Fitter (Applicant) v. Gerold (Nick) Heinze and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3880-10-ES: 2170958 Ontario Inc. operating as Aire One Heating and Cooling (Applicant) v. Michael Petry and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3881-10-ES: 2170958 Ontario Inc. operating as Aire One Heating and Cooling (Applicant) v. Bradley Haldenby and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3882-10-ES: 2170958 Ontario Inc. operating as Aire One Heating and Cooling (Applicant) v. Merideth Van Veen and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3884-10-ES: Masudur Laskar (Applicant) v. Delta Hotels Limited/Hotels Delta Limitee o/a Delta Chelsea Hotel and, Director of Employment Standards (Respondent) *(Terminated)*

3902-10-ES: Sami Wassi (Applicant) v. Avron Foods Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3905-10-ES: 1760634 Ontario Inc. operating as Imperial Food & Beverage (Applicant) v. William Hurman and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3931-10-ES: Shamyoon Assick-Singh (Applicant) v. St. Kozman & Demian Drugs Ltd. o/a Greendale Drugs and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3934-10-ES: Superior General Partner Inc. (Applicant) v. Lisa Stanley, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3942-10-ES: Zivogin Markovic (Applicant) v. World Auto Emission and Service Inc., Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3950-10-ES: The Oxygen Specialists, Inc. (Applicant) v. Karishma Kalaria and, Director of Employment Standards (Respondent) *(Dismissed)*

3957-10-ES: DTZ Barnicke Limited (Applicant) v. Jeffrey Flemington, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4007-10-ES: 1736646 Ontario Inc. o/a Shoeless Joe's Restaurant (Applicant) v. Kelly Reimer and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4012-10-ES: Anneliese Fritz (Applicant) v. 946900 Ontario Limited o/a Idlewood Inn, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4017-10-ES: Carleton University (Applicant) v. Justine Cain and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4019-10-ES: Trinity Auto Centre Inc. o/a Meadowvale Auto Collision (Applicant) v. Boguslaw Zacharski and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4021-10-ES: Fazale H. Laxmidhar o/a Laxmidhar Residential and Commercial Property (Applicant) v. Mattei Haidar and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4039-10-ES: Basic Tool Inc. (Applicant) v. Shawn Clarke and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4058-10-ES: Catharine (Kate) Stewart and (Applicant) v. 1648496 Ontario Limited, o/a Premiere Van Lines, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4059-10-ES: Classic Pos Inc. (Applicant) v. George Dudas and, Director of Employment Standards (Respondent) *(Terminated)*

4072-10-ES: Mom & Jo's Bistro Inc. (Applicant) v. Aaron Julien and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4080-10-ES: Peter Ayling & Associates Limited (Applicant) v. Frederick Howes and, Director of Employment Standards (Respondent) *(Terminated)*

4089-10-ES: Britech Corp. (Applicant) v. Gary Ingram, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4109-10-ES: Crofters Food Ltd. (Applicant) v. Randal Tucci and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4132-10-ES: Purrfect Pages Inc. o/a Purrfect Pages (Applicant) v. Kevin King and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4134-10-ES: 1591523 Ontario Limited o/a Bloom Restaurant (Applicant) v. Nigel Finley and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4136-10-ES: 1151245 Ontario Inc. operating as Cash Converters (Applicant) v. Leah Keith and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4142-10-ES: 1188610 Ontario Ltd operating as Nipigon Esso (Applicant) v. Karen Colins and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4160-10-ES: Edmond So director of Onsite Ready-Mix Inc. (Applicant) v. Roger Glouscher, Director of Employment Standards (Respondent) *(Withdrawn)*

4161-10-ES: Edmond So director of Onsite Ready-Mix Inc. (Applicant) v. Maria Botelho, Director of Employment Standards (Respondent) *(Withdrawn)*

4263-10-ES: Kevin Ma (Applicant) v. Shikari Group Ltd. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4266-10-ES: Anne-Marie Ross (Applicant) v. Christine Burrell and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4276-10-ES: 1384553 Ontario Inc. Operating as La Piazza Courtyard & Lounge (Applicant) v. Don Ferguson, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4281-10-ES: Roberto Buttazzoni, a director of Mastorcon Masonry Limited o/a Mastorcon Masonry Ltd. (Applicant) v. Dorrelle Reid and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4288-10-ES: 2142232 Ontario Inc. o/a Vivah Restaurant (Applicant) v. Manohar Sandhel, Director of Employment Standards (Respondent) *(Dismissed)*

4289-10-ES: 2142232 Ontario Inc. o/a Vivah Restaurant (Applicant) v. Sivalingam Thambimuthu, Director of Employment Standards (Respondent) *(Dismissed)*

4304-10-ES: Colin A. Adams (Applicant) v. Knoll North America Corp. and, Director of Employment Standards (Respondent) *(Terminated)*

4319-10-ES: Dirk Fischer, a director of Northbridge Trading Inc. (Applicant) v. Janine Warry and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4328-10-ES: George S. Shaikh o/a Hamilton Lock Glass and Door (Applicant) v. Helen Bourassa and, Director of Employment Standards (Respondent) *(Dismissed)*

4339-10-ES: 1243668 Ontario Ltd. o/a Divine Jewellery (Applicant) v. Wendy Li, and Director of Employment Standards (Respondent) *(Terminated)*

0008-11-ES: Donna Lynn Brink (Applicant) v. 1164203 Ontario Ltd. o/a Gordon Trailer Sales & Rentals and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0027-11-ES: Lois Croken (Applicant) v. Aquaterra Corporation and, Director of Employment Standards (Respondent) *(Withdrawn)*

0028-11-ES: Pierrette Beaudry (Applicant) v. Le Cap : Centre d' apprentissage et de perfectionnement Inc. et, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0083-11-ES: 2075506 Ontario Corporation o/a South Georgetown Medical Center (Applicant) v. Mandy Walsh, Director of Employment Standards (Respondent) *(Dismissed)*

0099-11-ES; 0100-11-ES; 0101-11-ES; 0102-11-ES; 0103-11-ES; 0104-11-ES; 0105-10-ES; 0106-11-ES; 0107-11-ES; 0108-11-ES; 0109-11-ES; 0110-11-ES; 0111-11-ES: Mark Renaud, a director of 1295224 Ontario Inc. o/a Kelsey's Restaurant - Tillsonburg (Applicant) v. Matthew McDougall and, Director of Employment Standards (Respondent); Mark Renaud, a director of 1295224 Ontario Inc. o/a Kelsey's Restaurant - Tillsonburg (Applicant) v. Rikki McDonald and, Director of Employment Standards (Respondent); Mark Renaud, a director of 1295224 Ontario Inc. o/a Kelsey's Restaurant - Tillsonburg (Applicant) v. Ashleigh Knoll and, Director of Employment Standards (Respondent); Mark Renaud, a director of 1295224 Ontario Inc. o/a Kelsey's Restaurant - Tillsonburg (Applicant) v. Karen Bauslaugh and, Director of Employment Standards (Respondent); Mark Renaud, a director of 1295224 Ontario Inc. o/a Kelsey's Restaurant - Tillsonburg (Applicant) v. Kurt Class and, Director of Employment Standards (Respondent); Mark Renaud, a director of 1295224 Ontario Inc. o/a Kelsey's Restaurant - Tillsonburg (Applicant) v. Taryn Moase and, Director of Employment Standards (Respondent); Mark Renaud, a director of 1295224 Ontario Inc. o/a Kelsey's Restaurant - Tillsonburg (Applicant) v. Christie Massi and, Director of Employment Standards (Respondent); Mark Renaud, a director of 1295224 Ontario Inc. o/a Kelsey's Restaurant - Tillsonburg (Applicant) v. Stacey Traynor and, Director of Employment Standards (Respondent); Mark Renaud, a director of 1295224 Ontario Inc. o/a Kelsey's Restaurant - Tillsonburg (Applicant) v. Dianne Lacoste and, Director of Employment Standards (Respondent); Mark Renaud, a director of 1295224 Ontario Inc. o/a Kelsey's Restaurant - Tillsonburg (Applicant) v. Deanna Haskett and, Director of Employment Standards (Respondent); Mark Renaud, a director of 1295224 Ontario Inc. o/a Kelsey's Restaurant - Tillsonburg (Applicant) v. Stacy Young and, Director of Employment Standards (Respondent); Mark Renaud, a director of 1295224 Ontario Inc. o/a Kelsey's Restaurant - Tillsonburg (Applicant) v. Tara Sirey and, Director of Employment Standards (Respondent); Mark Renaud, a director of 1295224 Ontario Inc. o/a Kelsey's Restaurant - Tillsonburg (Applicant) v. Linda Legacy and, Director of Employment Standards (Respondent) *(Terminated)*

0112-11-ES: GFG Armoured Security Inc. (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

0114-11-ES: Burt Transportation Services Ltd. (Applicant) v. Senthilrajan Rajendram and, Director of Employment Standards (Respondent) *(Terminated)*

0116-11-ES: 2024780 Ontario Limited o/a On Wheel Carrier (Applicant) v. Sharadkumar Gujar and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0134-11-ES: Peoplesource Staffing Solutions Inc. (Applicant) v. Shannon MacPherson and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0155-11-ES: 1140993 Ontario Limited Cofee Time Donut (Applicant) v. Inglis Mary Lynne, Director of Employment Standards (Respondent) *(Dismissed)*

0215-11-ES: Gina Wray (Applicant) v. The Friends o/a Pines Long Term Care Home, Director of Employment Standards (Respondent) *(Terminated)*

0231-11-ES: Bohmer Inc. (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

0302-11-ES: Charleen Bryan (Applicant) v. Barber Stewart McVittie & Wallace Insurance Brokers Limited and, Director of Employment Standards (Respondent) *(Withdrawn)*

0381-11-ES: The Phoneman (Applicant) v. Unknown, Director of Employment Standards (Respondent) *(Terminated)*

0384-11-ES: 1279821 Ontario Ltd. operating as Bhima's Warung International (Applicant) v. Mike Morrison and, Director of Employment Standards (Respondent) *(Dismissed)*

0389-11-ES: Triple H Restorations Inc. (Applicant) v. Scott Ridge and, Director of Employment Standards (Respondent) *(Terminated)*

0442-11-ES: Steve Bonyun (Applicant) v. Brant Artillery Gunners Club Incorporated, and Director of Employment Standards (Respondent) *(Dismissed)*

0496-11-ES: Shannon E. Spry (Applicant) v. Casino Rama Services Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

0599-11-ES; 0600-11-ES; 0601-11-ES; 0602-11-ES; 0603-11-ES; 0604-11-ES; 0605-11-ES: Isaac Good (Applicant) v. Self Help to Recovery Inc. and, Director of Employment Standards (Respondent); Fran Chaisson (Applicant) v. Self Help to Recovery Inc. and, Director of Employment Standards (Respondent); Sharon McNamara (Applicant) v. Self Help to Recovery Inc. and, Director of Employment Standards (Respondent); Carole Nelson (Applicant) v. Self Help to Recovery Inc. and, Director of Employment Standards (Respondent); Julie Smith (Applicant) v. Self Help to Recovery Inc. and, Director of Employment Standards (Respondent); Louise Alexander (Applicant) v. Self Help to Recovery Inc. and, Director of Employment Standards (Respondent); Karen Taylor (Applicant) v. Self Help to Recovery Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

1269-07-HS: 931080 Ontario Inc. o/a Rahnmet (Applicant) v. United Steelworkers of America and, Peter Bruce, Inspector (Respondent) *(Terminated)*

2841-09-HS: Zephyr Peat Land Harvesting (Applicant) v. James Milne, Inspector (Respondent) *(Granted)*

1128-10-HS: Hydro One Networks Inc. (Applicant) v. Power Workers Union and, Enzo Seca, Inspector (Respondent) *(Dismissed)*

1725-10-HS: Kastner's Mens Wear (Applicant) v. Jean Samson, Inspector (Respondent) *(Terminated)*

3196-10-HS: Hydro One Networks Inc. (Applicant) v. Canadian Union of Skilled Workers, Teamsters Local 230, Michael Rouatt, Inspector (Respondent) *(Terminated)*

3586-10-HS: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) Local 6500 (Applicant) v. Vale and, Shaun Carter, Inspector (Respondent) *(Withdrawn)*

3867-10-HS: Dufferin Construction Company (Applicant) v. Metrolinx and, Frank Tancredi, Inspector (Respondent) *(Withdrawn)*

0211-11-HS; 0212-11-HS: PowerTel Utilities Contractors Limited (Applicant) v. IBEW Electrical Workers, Local 1687 and, Marcel Labelle, Inspector (Respondent) *(Terminated)*

APPEAL - PUBLIC SECTOR COMPENSATION RESTRAINT TO PROTECT PUBLIC SERVICES ACT, 2010

0583-11-RB: The Institute of Public Administration of Canada (IPAC) (Applicant) v. (Respondent) *(Granted)*

0629-11-RB: Amy Maas-Cormier (Applicant) v. South East Community Care Access Centre (Respondent) *(Terminated)*

PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

0144-09-PS: Ontario Nurses' Association (Applicant) v. Bayshore Home Health, Bayshore Home Health, Sarnia, Bayshore Home Health, Chatham, Victorian Order of Nurses Sarnia-Lambton, Victorian Order of Nurses Chatham-Kent (Respondent) v. Erie St. Clair Community Care Access Centre (Intervener) *(Granted)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

2980-07-U: Adhin Sukhu (Applicant) v. Ontario Public Service Employees Union (Respondent) v. Centennial College of Applied Arts and Technology (Intervener) *(Withdrawn)*

3419-09-U: Rick Johnson (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) *(Dismissed)*

0549-10-ES: Tamas Foki-Director of Vienna Sandwiches Inc. (Applicant) v. Todd C. Dafoe and, Director of Employment Standards (Respondent) *(Dismissed)*

1657-10-ES: Candice D. Brown (Applicant) v. 1715717 Ontario Inc. o/a Star Diner and, Director of Employment Standards (Respondent) *(Granted)*

2084-10-U: Giovanni Gianfrancesco (Applicant) v. International Brotherhood of Electrical Workers Local Union 303, Canada (Respondent) *(Dismissed)*

2990-10-R: Labourers' International Union of North America, Local 625 (Applicant) v. A & C Grossi Construction Ltd. (Respondent) *(Withdrawn)*

3941-10-ES: Nickel City Hotel (2009) Limited o/a The Nickel City Hotel (Applicant) v. Denise A. Seguin and, Director of Employment Standards (Respondent) *(Terminated)*

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